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IMPLEMENTATION OF THE ATLANTIC STRIPED BASS CONSERVATION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

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CONTENTS

OPENING STATEMENTS

	Page
Chafee, Hon. John H., U.S. Senator from the State of Rhode Island	1
Lautenberg, Hon. Frank R., U.S. Senator from the State of New Jersey	3

WITNESSES

Alperin, Irwin, executive director, Atlantic States Marine Fisheries Commission	34
Written statement	62
Responses to additional questions	82
Letter to Senator Stafford	96
Balderson, Wayne, president, Westmoreland County Watermen Association, accompanied by Meverell Haynie, president, Virginia Watermen Association, and Robert T. Brown, president, St. Mary's County Watermen Association	21
Brown, Robert, president, St. Mary's Watermen Association	26
Douglas, Jim, Acting Deputy Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, accompanied by Mr. Jensen, Fishery Management Operations Division	5
Written statement	49
Haynie, Meverell, president, Virginia Watermen Association	26
Kutkuhn, Joseph, Associate Director, Fish and Wildlife Service, Department of the Interior	8
Written statement	56
Russell, Dick, president, Stripped Bass Emergency Council	27
Warner, Hon. John W., U.S. Senator from the Commonwealth of Virginia	4

ADDITIONAL MATERIAL

Hughes, Hon. Harry, Governor, State of Maryland, letter from	104
Statements:	
International Association of Fish and Wildlife Agencies	108
Sport Fishing Institute	109

IMPLEMENTATION OF THE ATLANTIC STRIPED BASS CONSERVATION ACT

FRIDAY, JULY 19, 1985

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION,
Washington, DC.

The subcommittee met at 10:02 a.m., in room SD-406, Dirksen Senate Office Building, Hon. John H. Chafee, chairman of the subcommittee, presiding.

Present: Senators Chafee and Lautenberg.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Good morning.

This morning's hearing concerns a topic that I have been working on since 1979, saving the striped bass. Many of our coastal fish have undergone a precipitous decline during the last decade. More efficient commercial fishing methods, increased recreational fishing, lower production, and degraded habitat are some of the factors responsible for the decline of our coastal fish.

Without question, we need to improve the conservation and the management of all migratory fish. The best example of this problem, or perhaps more accurately referred to as the worst example, is the striped bass situation. This is the focus of today's hearing.

In addition to the historical significance of the striped bass, the striped is a delectable table-fish, as well as a game fish. This magnificent creature has deservedly been called the aquatic equivalent of the American bald eagle. The possible loss of the striped has alarmed fishermen, scientists, and people concerned about the environment generally.

This morning's hearing has three purposes. The first relates to the Emergency Striped Bass Research Study that was mandated by Congress in 1979. As part of this, our witnesses have been asked to review the status of the striped bass stocks along the Atlantic coast and to comment on the latest report from the study group.

We will consider whether the study group is covering all the bases. For example, has there been adequate review of the striped's early developmental stages and the study of eggs for possible genetic defects. An obvious issue for this committee is whether to extend the congressional mandate for the study beyond 1986, when it is scheduled to expire. If so, do we need to redirect the course of the

study to better define what information we need. The first purpose deals with the study.

The second purpose of the hearing is to perform oversight. Last fall, Congress passed the Atlantic Striped Bass Conservation Act. We need to see how that law is working. The act called upon the Departments of the Interior and Commerce to evaluate the adequacy and effectiveness of the Atlantic States Marine Fisheries Commission's 1983 Interstate Management Plan for striped bass, including the 1983 amendment calling for a 55-percent reduction in fishing mortality. That report came to Congress on May 10 of this year, and will be discussed today.

The act also directed the Commission to report on how well the plan is being implemented by the various States and, as you recall, it authorized the Federal Government to impose a moratorium on the taking of striped bass in any State that is not in compliance with the interstate plan.

These provisions provide the guts of the law, and I am particularly interested to see if they are working as we intended.

The moratorium that was provided in the act we passed last year was at the heart of the law. I am particularly interested to see if the plan that came out as a result of that law is working as intended.

The third and most important purpose of the hearing is to help figure out where we go from here. Last year, I introduced S. 667, a bill that went well beyond the law we finally passed. That bill would have established an immediate Federal moratorium on the taking of striped bass, and would have established a system for effective interstate control of all migratory fish species and their habitat.

I continue to believe that controls on fishing are only part of the answer. Habitat preservation and control of environmental contaminants may be even more important. Nevertheless, effective interstate controls on fishing are needed. This is true for migratory fish generally, and for striped bass in particular.

For some reason, proposals to institute Federal control of migratory fish usually become embroiled in controversy, and that is an understatement. People, for some reason, don't object at all to Federal control of migratory birds, such as ducks, but people become all excited when you try to control fish, and you get all sorts of claims about State rights to object to Federal control of migratory fish, such as the striped.

This problem goes beyond striped bass, but of immediate concern is the striped, and the fact that the law that we passed last year and the threat of a Federal moratorium to force State compliance with the plan will expire in April 1986. A year from now, that moratorium that we have in the current law will expire.

I will be frank with you that I am troubled by what I see. The individual States have taken great strides since last year, we acknowledge that. There has been a good deal of attention paid to this problem and a lot of action. Everyone here should take great pride in what has been accomplished. But the question remains: Have we done enough to save the fish?

What we have is a hodgepodge of rules and regulations. We have different State approaches that have produced inequities, and will

most probably prove to be ineffective. The free movement of fish from one State to another State, with different rules and regulations, make it impossible to know if applicable rules and regulations are being followed.

Not only do we have a checkerboard pattern of regulation, but the process we had to follow to get there is not a model of efficiency. Indeed, it is a model of inefficiency. We must question the value of the current system, when the Commission's own Scientific and Statistical Committee found, in May 1985, that only four or five members were in compliance with the interstate plan, and a month later the Commission found that all 12 members were in compliance. Conveniently, such a finding by the Commission precluded the imposition of the Federal moratorium.

Based on reports from the Departments of the Interior and Commerce, we now know what I suspected all along, the 55-percent reduction is inadequate to protect this important fish.

It is encouraging that the Commission recognized the shortcomings of the plan and adopted another amendment in June, this one may do the trick. I am skeptical, but I am willing to be convinced otherwise. Unfortunately, the problems of equity, lack of uniform regulations, and questionable efficiency persist.

Where does this leave us? At a minimum, we need to extend last year's law authorizing the imposition of a Federal moratorium in those States that don't comply with the Commission's latest plan. I have circulated a draft bill that would do that. We may need to do more. Perhaps what is called for is an immediate Federal moratorium and a mandate that the Commission completely rewrite the striped bass management plan. Maybe we need to limit interstate sale of striped.

I look forward to the comments of our witnesses, and we will keep their suggestions in mind as we prepare legislation on this matter. The question I have is: does the draft bill to extend the current law go far enough?

I am delighted that Senator Lautenberg could be with us. Senator Lautenberg, a distinguished member of this subcommittee, has been very attentive and concerned with the status of the striped, and indeed all environmental matters. We welcome you and look forward to your statement.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

I appreciate your leadership in requiring strong efforts to restore the striped bass. That interest is well known to everybody sitting in this room, and all Americans who care about this magnificent species.

The Atlantic Striped Bass Conservation Act requires stringent limitations in the harvesting of striped bass in an effort to reverse the significant decline. These limitations affect the livelihood of some commercial fishermen. I understand that further limitations, including a complete moratorium, are also being considered.

If we are serious about restoring striped bass, we have to ensure that the Federal Government doesn't take any action which under-

cuts the effort we have with the Atlantic Striped Bass Conservation Act.

It makes no sense to require commercial and recreational fishermen to make sacrifices on behalf of the striped bass if we, in the Congress and the executive, are unwilling to do our share on behalf of this fish.

In the act, Congress found that the loss of habitat is among the reasons why Atlantic striped bass have been severely reduced. The construction of the landfill portion of the Westway Highway in New York City will result in the loss of over 200 acres of overwintering habitat for the healthiest stock of striped bass on the east coast.

Mr. Chairman, it is essential for this committee to explore the impact that the loss of that habitat from Westway and other projects could have on the efforts you have undertaken to restore the striped bass population.

Thank you very much, Mr. Chairman.

Senator CHAFEE. Thank you, Senator.

We are grateful to have present with us the very distinguished senior Senator from Virginia, who has long been active in this area, a noted environmentalist who is concerned about fish, as well as other wildlife.

Senator Warner, we welcome you here and look forward to any statement.

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator WARNER. Mr. Chairman, I appreciate the privilege of participating here briefly this morning. I thank Senator Lautenberg, a distinguished member of this committee.

I have joined you in the legislation, cosponsoring and otherwise, and I will continue to do so. I do that in response to the watermen of Virginia. We have two distinguished presidents of our associations here who will be testifying today. I would focus on one point, and that is, the administration and the Congress are working together in partnership on a very broad plan to restore—I use that word carefully—to restore Chesapeake Bay, and that primarily concentrates on elimination of pollution. But if we are to achieve that goal, we have got to have something to fulfill the wildlife and the natural species.

I believe that your program goes hand in hand, and is an important corollary to the overall program to restore Chesapeake Bay. I congratulate you and the members of the committee.

Senator CHAFEE. Thank you. I know you have a busy schedule.

The first panel will be Mr. Douglas, Acting Deputy Assistant Administrator for Fisheries, and Mr. Joseph Kutkuhn from Fish and Wildlife.

STATEMENT OF JIM DOUGLAS, ACTING DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE, ACCOMPANIED BY MR. JENSEN, FISHERY MANAGEMENT OPERATIONS DIVISION

Mr. DOUGLAS. Thank you, Mr. Chairman.

Senator CHAFEE. What we would like you to do is to limit your testimony to 5 minutes.

Everybody's statement will go into the record, so don't worry about that. You don't even have to ask for it, that will be done.

Mr. DOUGLAS. Five minutes is an awfully short time to deal with a subject of such importance to this committee and to us.

Senator CHAFEE. This is pretty important. Let's give you 8 minutes.

Mr. DOUGLAS. All right, sir.

Senator LAUTENBERG. Mr. Douglas, I must tell you, before you start, that granting the extra time demonstrates the interest of the chairman in this hearing. I have never seen him acquiesce so easily to such a request.

Mr. DOUGLAS. I trust, Senator Lautenberg, that it also demonstrates the willingness of my agency, and I am sure the sister agency, to respond as fully as we can to the requirements of this committee.

Let me, Mr. Chairman, very briefly capsulize and highlight the points in our testimony and try to make that consistent with the items that you have suggested, and asked that we identify and address in your letter of invitation.

The status of the stocks and the Emergency Striped Bass Research Act, I can address very briefly by saying that you would see that the 1984 landings in striped bass have increased over 1983. But, 1983 was the lowest year on record. We certainly are pleased to see at least some increase from there. However, the indices, that we think are even more important, are still very poor.

The Roanoke stocks and the Chesapeake Bay stock—the Chesapeake Bay, of course, being the single most important stock contributing to the east coast striped bass—those indices are still very poor, and even trending downward. The Hudson River stocks, on the other hand, seem to be relatively stable and maintaining a long-term average.

The most recent findings under the emergency striped bass research deal with primarily some environmental factors. Our scientists have found that, for whatever reason, when there is a low Ph—my scientists tell me that that is high acidity—that metal contamination, heavy metal contamination, particularly aluminum, seems to be an offending item on striped bass in its very early stages and its larval stages.

The conclusion there is that when we have episodic depressions in Ph, and they do occur from time to time, the attendant heavy metals for some reason create a distinct problem for the survival of the fish.

I trust that we are going to follow up on that and try to find out what can be done about those kinds of episodic depressions, if anything.

The full report we will make available to the committee, and your staff, I am sure, would like to look into it. There is an awful lot of detailed scientific information there.

For your information, to date, under the Emergency Striped Bass Research Act, the Federal expenditures have totaled approximately $4.1 million. There has been an approximate $1 million in direct match by the States which has resulted in more than $5 million being spent over the last several years, and that doesn't even include what the States and other Federal funds have contributed to striped bass. So we have been spending somewhere on the order of $8 to $10 million over the last 5 or 6 years trying to get at some of these problems.

You also asked that we address and evaluate the Atlantic States Marine Fisheries Commission's plan which was mandated in the Atlantic Striped Bass Conservation Act. I think to do that, Senator, we have to quickly go through the sequential steps of that plan.

There was an initial plan, and at that time I happened to be head of the Virginia program, so I was part of that plan as a State administrator. That initial plan had size limits and other measures. Subsequently, it was determined that the plan wasn't enough, and the States decided that it was necessary to have at least an additional 55 percent reduction in the fishing mortality rate. That was the plan both the Fish and Wildlife Service of the Department of the Interior and the National Marine Fisheries Service of the Commerce Department evaluated.

That evaluation, in a nutshell, indicated that we did not believe that the measures then laid out in the plan were sufficient. That sufficiency was measured against a criterion of trying to get a long-term doubling of the Maryland index within 5 years. The Maryland index of striped bass is the best indication of the health of the Chesapeake Bay stocks that we have at this time.

Our evaluation went further than just that, and indicated that there were other options that ASMFC might adopt which we thought, if added to what they had already adopted, would be sufficient. Amendment No. 3, which has been adopted by the ASMFC but the States have not yet had time to implement, would allow 95 percent of the 1982 year class of females to spawn at least once. We believe that if this is implemented across the board by the States, there is really nothing more that could be done to address the fishing mortality side of the equation.

We concluded that with amendment 3 the ASMFC Program would be sufficient.

You also asked that we address the ASMFC action. The States individually took actions that they believed achieved the initial plan plus the 55-percent reduction in fishing mortality. Each State did that at certain intervals over a period of time. When one is looking at what is occurring, it is a snapshot in time, and one has to be aware of exactly that period of time.

In June, the Atlantic States Marine Fisheries Commission, in a meeting, reviewed the actions of the States and determined that all States were basically in compliance with the plan. We have reviewed that action and believe that overall for the east coast stocks, Chesapeake Bay stocks in particular, that the States did achieve more than the 55-percent reduction.

We recognize that some States did more than others in trying to achieve that, but we have not made any attempt to try to assess individual State actions in that regard because we believe that if they achieve the overall goal, then that is what we are really looking for.

Senator CHAFEE. Let me see if I understand this. What you are saying is that you are not evaluating what each State did, you are just saying that overall there was a 55-percent reduction.

Mr. DOUGLAS. Yes, sir, in fact, more than. Our scientists tell me—let me say that this 55 percent is a very difficult thing to pin down—that our best educated assessment is that they have achieved probably close to 70 percent.

Senator CHAFEE. But that has been achieved because some States have done more than their share. Maryland went all the way.

Mr. DOUGLAS. That is correct.

Senator CHAFEE. Maryland and Delaware, as I understand it, put a complete moratorium.

Mr. DOUGLAS. That is correct.

Senator CHAFEE. So they do their part, and others don't.

Mr. DOUGLAS. Yes, sir. I take the position that if the States themselves took no exception to the fact that some States had done a little more than others, which I assume they took no exception when they all voted unanimously that all were in compliance——

Senator CHAFEE. You mean the Commission. Is there one member from each State on the Commission?

Mr. DOUGLAS. Yes, sir.

Senator CHAFEE. One representative.

Mr. DOUGLAS. Each State is represented by three Commissioners, but the State has a single vote under the compact.

Senator CHAFEE. They voted unanimously that they were in agreement.

Mr. DOUGLAS. Yes, sir; that is my understanding. Mr. Irwin Alperin, who is the Executive Director of ASMFC, is right here on a subsequent panel, so you could address that to him.

Senator CHAFEE. Did some States abstain?

Mr. DOUGLAS. No, sir; not on the final vote.

Senator CHAFEE. Well, they are very nice to each other. It seems to me that if I were a State that was doing my part, that is, Maryland, I would be irked. Indeed, Rhode Island and New Jersey are two of the ones who haven't completely complied, if I read this correctly.

Mr. DOUGLAS. "Completely complied," when you say, if you read this correctly, I don't know what you are reading, Senator.

Senator CHAFEE. I am reading page 5 of your testimony, "Three of the States, Rhode Island, New Jersey, and North Carolina, received conditional approval pending implementation of proposed new regulations."

Mr. DOUGLAS. Yes, sir; those three States were identified in the final vote as having actions that were pending, and if those actions occurred, then they were in compliance. So they have that caveat on those three States.

Senator LAUTENBERG. I would also, if I may, Mr. Chairman, I am not going to protect sin wherever it is, even if it is in my home State. We want to protect the striped bass, and you do make note

of the fact that some of the States have not complied to the same degree.

I can tell you this, I was recently up on the east coast talking to some fishermen, and there is a lot of eyewinking going on about, "What did you do? Did you return the stock that was smaller? Did you catch them in nets," which I think is prohibited, if I am not mistaken. Draggers are not allowed to take them; is that correct, commercial fishermen?

Mr. DOUGLAS. It depends on the State, Senator.

Senator LAUTENBERG. It depends on the State. Even the States that require it, it is very tough to enforce.

I think the point you make, Mr. Chairman, is that we have to make certain that all of the States comply, even if it is yours or mine.

Senator CHAFEE. Sure.

Go ahead, Mr. Douglas.

Mr. DOUGLAS. I think the Department of the Interior has done a more in depth analysis on a State-by-State basis, and perhaps Mr. Kutkuhn can address some of those questions.

Finally, sir, you asked that we address pending legislation or at least the draft bill, and you will note that my testimony is silent in that regard, and that is strictly because the administration has no position at this time on any pending piece of legislation.

Senator CHAFEE. All right, fine.

Dr. Kutkuhn.

STATEMENT OF JOSEPH KUTKUHN, ASSOCIATE DIRECTOR, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Dr. KUTKUHN. Thank you, Mr. Chairman. Good morning.

I very much appreciate this opportunity to speak for the Department on the matter of the Atlantic striped bass resource. I have a prepared statement and I will refer to that in my opening remarks, excerpting from it those relevant parts for this purpose.

As I said, we appreciate this opportunity to address the four questions that we were invited to respond to. You have already amply stated or restated the plight of the resource. There can be no debate about over the resource being now at its historic low.

You may recall that last September, the Director of the Fish and Wildlife Service appeared before the subcommittee and testified on several bills that addressed potential remedies for the problem confronting the striped bass. Subsequently, of course, the Congress passed the Atlantic Striped Bass Conservation Act, which in our view is proving to be a very useful mechanism for focusing attention on this problem.

The act also reauthorized the emergency striped bass study through this fiscal year, and that study's most recent report has been submitted to the Congress. I won't, in the interest of time elaborate on the conclusions conveyed by that report.

In addition, the act required the Secretaries of Commerce and the Interior to review the plan that had been developed under the aegis of the Atlantic States Marine Fisheries Commission, to focus attention on the need for coordinated management of the striped bass resource, to review that plan in the sense of how well it is

being applied State by State, and report to the Congress on its potential for achieving the purposes of the act.

The joint report, as has already been indicated, was transmitted to the Congress on May 7, indicating that at that time the Commission's plan, as amended, was deficient in several respects. The report also noted, however, that the plan and compliance with it would be adequate if the Commission were to adopt an amendment pending at that time.

I say the plan was deficient in several respects in the sense that it, in our view, wouldn't have provided for as accelerated a recovery of the fishery as perhaps some other more stringent measures might have had the effect of doing.

In mid-June, the Commission adopted an amendment, somewhat different from the one I just referred to, that had been on the table since last December, which in the Service's estimation promises substantial conservation benefit, if implemented. We deduce that the changes this amendment calls for will require the States to increase gradually the plan's minimum length requirements from the 24 inches specified earlier to as much as 36 inches by April 1988.

The focus of that amendment, of course, was the relatively strong 1982 year class of the Chesapeake Bay stocks, and the intent of the amendment is to maximize protection of that year class as it progresses in its migratory excursions and is exposed to fishing and other stresses along the way.

We feel that this latest added protection for the bass, if implemented, would certainly and substantially improve the prospect for rehabilitating the stocks, particularly those of the Chesapeake Bay. The National Marine Fisheries Service has not really had ample opportunity to determine the full extend of prospective improvements and continues to study the collective effect of this amendment, all of the preceding amendments, and the related compliance actions.

Since the Striped Bass Act was enacted last year, a great many positive actions have been taken. We are all pleased to report, as already indicated, the joint Interior/Commerce evaluation of the interstate fishery management plan developed earlier by the Commission, which was prepared and submitted in conformance with the act.

Moreover, the Commission, as all now appreciate, has since examined State efforts to further protect the bass in ways consistent with that plan. As you know, a number of States, almost immediately in response to the act, strengthened their relevant fishery regulations to some desirable and salutary effect. In particular, the States of Maryland and Delaware demonstrated notable leadership by applying moratoria on the take of striped bass in their waters. They, of course, deserve recognition for this very bold step and the political fortitude that it required. We applaud their actions.

Then, in deliberations just last month, the Commission determined that all States, in addition to Maryland and Delaware, were then and are now in compliance with the approved plan.

From its independent, technical analysis of the Commission's recent determination, the Service has tentatively concluded that

the States, as a group, have taken a very significant step toward rehabilitating the Atlantic striped bass resource.

We second Mr. Douglas' and, Mr. Chairman, your comments regarding the commendations that all the States deserve, in many instances having to act and make very difficult decisions. We feel, in that respect, that the act has had a very significant impact on focusing attention on the plight of the bass and on the need to act collectively and cooperatively in doing something about bringing it back to full productivity.

Upon considering regulations that were actually in force on June 1, just before the Commission made its deliberations, the Service believes that only Delaware, Maryland, the Potomac River Commission and North Carolina are demonstrably in compliance with the plan. Regulations by Virginia and New Hampshire, to have taken effect after June 1, will, in our view, bring these States into compliance as well. Two other States, Massachusetts and Rhode Island, have also taken positive steps by imposing additional controls on their commercial fisheries for striped bass. Lack of information about the basis on which those States made plan-related changes in the regulation of corresponding recreational fisheries, however, precluded our projecting, for each of these two States, the total effect of all their latest actions.

The States of Maine, Connecticut, and New Jersey do not allow commercial fishing for striped bass, as you know. This prohibition certainly aids in implementation of the act and of the plan. But companion regulations on recreational take, we believe, remain inadequate for purposes of contributing materially to the 55-percent reduction in striped bass fishing mortality called for in the plan.

Although the State of New York does meet the minimum-length requirement of the plan, we feel that it has yet to institute the degree of control over its commercial fishery, especially the one at the end of Long Island, that we feel is necessary before achieving full compliance with provisions of the plan.

We want to take this opportunity to assure the subcommittee that the Fish and Wildlife Service will sustain its participation with the States and with the Commission, and with our sister agency, the National Marine Fisheries Service, in being responsive to your interest in restoring this valuable food and sport fish to levels of previous abundance.

Mr. Chairman, this concludes my formal testimony. I thank you for the opportunity to provide it. I will be pleased to answer any questions you may have.

Senator CHAFEE. Thank you, gentlemen.

Do you think that we ought to extend the study beyond 1986? We started this study in 1979, and it was to be a 3-year study. Studies suddenly achieve a life of their own, and they don't end. Like Lazarus, they can be revived from the dead. There was a 3-year study from 1979 to 1981, and now we are up to 1986. Should we keep it going? What do you say to that, Mr. Douglas?

Mr. DOUGLAS. We certainly don't know all that is needed to know about the striped bass, even though we have been studying them for a millenium now, practically. So I think the answer is that we certainly need to continue our efforts to monitor what is happening and to continue to get at some of these environmental

questions that seem to be just now surfacing, as I mentioned, the heavy metals and the low Ph.

The answer is we need some vehicle to continue to permit us to study this particular fish.

Senator CHAFEE. What do you say to that, Doctor?

Dr. KUTKUHN. Mr. Chairman, I can second some of Mr. Douglas's response. As you know, the Department and the administration opposed reauthorization of the emergency study 2 years running, the basis being that sufficient work had been done in the emergency context to focus attention on the major generic problems affecting the resource, and it was time for the States collectively, with support and assistance from the Federal Government, to start to take actions to get the downward slippage reversed.

I am not implying that there isn't more that we need to know about the striped bass, and in that sense, I second Mr. Douglas's remarks We do feel that the focus on the emergency connotation has perhaps taken attention away from the need to take physical management actions in the sense of restoring the habitat, and in the sense of cutting back on the take of the resource, so as to have the desired effect of maintaining it and laying the groundwork for rebuilding its productivity.

Senator CHAFEE. Mr. Douglas, it seems to me that in the 1979 law, we required some work be done on the early developmental stages of the striped bass eggs, for example, studying the eggs for genetic defects, Has that been done?

Mr. DOUGLAS. Mr. Chairman, if we are going to get into some of the details of the studies that have been going on, let me ask Mr. Jensen to come up.

Senator CHAFEE. I am not going to get into too many details.

Mr. DOUGLAS. This is Mr. Jensen who is in our Fishery Management Operations Division, who has been dealing specifically with striped bass and some of the elements of the study. He is a former administrator of the Maryland Marine Fisheries Division, so he is very knowledgeable about striped bass.

Senator CHAFEE. Pull the mike closer to you, Mr. Jensen. I have a couple of questions on the study, and the first one is about the genetic defects in the egg.

Mr. JENSEN. I think probably the most significant thing that has been done, particularly in connection with the endangered species study, we had our Ad Hoc Planning and Coordinating Group go to Maryland and held a 3-day conference on exactly that subject. It was mostly focused on, if the States get involved in a hatchery or stocking program, do we need to worry about the genetics of mixing fish, mixing eggs, and not returning the hatchery fish to the stream of origin.

Out of that conference came quite a bit, I think most of the technical knowledge to date on the genetics of striped bass. That, in fact, is a matter of record, and I believe that we have reported some of that in the report to Congress.

Senator CHAFEE. That dealt with the hatchery eggs. My question really dealt with the natural eggs out there in the streams. Do you have any information on the genetic effects that might be in those eggs as a result of pollution or whatever it might be?

Mr. JENSEN. We have not funded any specific work on that subject. It has been debated quite a few times, almost annually in the Planning and Coordinating Group. The only work that has been done, has been done by some individual researchers, and if you want more details on it, we can get someone who is more expert in the genetics than I am.

Senator CHAFEE. I thought that that was one of the purposes of the study, to fund that.

There is a body of thought out there that thinks that the reason the striped is disappearing is that the contaminants in the water are destroying the eggs, or so affecting the eggs that they are genetically transformed, and thus we are not getting the stocks that we should be getting.

Mr. JENSEN. It is a theory yet to be proven. It has been investigated and debated. I think the focus of the emergency striped bass study, under your legislation, has been on the survival of the larval stage of the fish, because it has become very obvious in the course of the studies that that is a real problem. So we have focused most of our work, under the emergency striped bass legislation, in that area.

Senator CHAFEE. Can you tell us anything about the acid rain theory in the decline of the striped?

Mr. JENSEN. That theory has gained a lot of credence over the past few years based partly on some of the work conducted under the emergency striped bass study, predominantly in the Nanticoke River in the past couple of years. The work is currently being funded to further understand that theory.

I believe that we have concluded in the reports to your committee and to the Congress that we have identified a connection between rainfall and episodic events of low Ph, and a correlation between those episodes and the dieoff of larvae. That is the very point that we are focusing on right now in the studies; Just what is that connection?

Senator CHAFEE. The Ph problem was mentioned earlier by Mr. Douglas, has there been a suggestion of dumping lime in those rivers, trying to counterbalance the Ph factor?

Mr. JENSEN. It has been suggested.

Senator CHAFEE. I suppose that it would take massive quantities of lime.

Mr. JENSEN. Yes, it would be quite an undertaking. That has been tried in some fresh water work, and I am not intimately familiar with it as to whether it is still going on or not. It would be a massive project, particularly in tidal waters where you have the ebb and flow of fresh and saline waters; it becomes very difficult to control and measure.

Senator CHAFEE. Back to the compliance with the 55-percent reduction, I think we ought to make the record clear, that while there seems to be overall compliance, that has come about not because of State-by-State activities, but because some States have done more than their share, like Maryland and Delaware, as you mentioned.

I have some other questions, but I will yield to Senator Lautenberg.

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

Gentlemen, I want to ask some questions about the subject under study, the decline in the striped bass population. If you don't have answers readily available, please feel free to say so, and then I would ask you to submit them to us for the record.

Each of you talks about substantial decline in your statements, and I just wonder whether you have been able to relate the peak catch of 1973, and my number here says 14 million pounds of striped bass were taken at that time by commercial fishermen.

What is the recent comparison, if we could get that, does anybody know the commercial fishing results for the last year?

Mr. DOUGLAS. Yes, sir, we have it. We just got the latest 1984 commercial landings which is, coastwide, approximately 2.7 million pounds commercial. In our survey of recreational fishing, we estimate that total in the same year to be about 5.3 million pounds.

Senator LAUTENBERG. Recreation was what?

Mr. DOUGLAS. It was 5.4, or 5,347,000 pounds.

Senator LAUTENBERG. Twice as much as commercial landings.

Mr. DOUGLAS. Yes.

Senator LAUTENBERG. The commercial restraints have been working.

Mr. DOUGLAS. Yes.

Senator LAUTENBERG. Do you have any idea what the decline in landings has meant in terms of jobs and economic impact in these States?

Mr. DOUGLAS. The latest report we have, Senator, and we would be happy to supply this to you, is one that compares the 1973 peak that you are talking about with 1980. We haven't had an economic study to bring that up to date. Mr. Jensen reminds me that this is one of the first studies that was done under the Emergency Striped Bass Act to try to get a handle on the economics.

I might just, for your edification, sir, point out a couple of things. The decline in recreational catches since 1984 cost the region, the East Coast Region, 7,500 jobs between 1974 and 1980, and an annual loss of $218 million in economic activity.

Senator LAUTENBERG. That is on the recreational side.

Mr. DOUGLAS. That is commercial and recreation. This is between 1974 and 1980, a loss of 7,500 jobs, and $218 million.

That report went on to indicate that the greatest losses of approximately $105 million in economic activity and 3,000 jobs came in the mid-Atlantic States of New York, New Jersey, and Delaware. The New England States, according to the study, lost $78 million in economic spending and approximately 2,400 jobs.

Senator LAUTENBERG. That responds, thank you very much, Mr. Douglas.

Mr. DOUGLAS. All right, sir.

Senator LAUTENBERG. The Mid-Atlantic Fishery Management Council's draft of the Striped Bass Fishery Management Plan says that the council, and I quote here, "are deeply concerned about the effects of marine habitat degradation on striped bass." The plan contains a number of recommendations, the first of which is that all available striped bass habitat be preserved, including striped bass migration spawning, nursery, over-wintering, and feeding areas.

I assume that I will not get any dissent or disagreement if I ask whether you agree that protection of the habitat is an essential element in the recovery of the striped bass population?

Dr. KUTKUHN. Senator, it is fundamental.

Mr. DOUGLAS. Yes, sir, I think all of our studies are beginning to show that environmental degradation is one of the critical factors affecting striped bass.

Senator LAUTENBERG. In particular, I am focusing on the habitat itself.

Mr. DOUGLAS. I understand that, and we include habitat in the broader range of environmental degradation.

Senator LAUTENBERG. Should the Atlantic States Marine Fisheries Commission be taking a more active role in protecting striped bass habitat in its striped bass plan? Do you think that they sufficiently cover the subject?

Dr. KUTKUHN. The matter, sir, is, I feel, quite amply addressed within the plan. Whether or not the Commission itself, logistically and otherwise, has the ability to do much more than to highlight the need to protect and restore the habitat, and thereby the productivity of the resource, I can't speak to.

Senator LAUTENBERG. But there is a habitat focus, and it is an essential part.

Dr. KUTKUHN. Definitely so, sir.

Senator LAUTENBERG. Mr. Douglas, in your agency's January 16, 1985, letter to the New York District Corps of Engineers, your agency's regional director said that construction of Westway would conflict with the Atlantic Striped Bass Conservation Act. I assume that that is undeniable. Do you have the letter?

Mr. DOUGLAS. Yes, sir.

Senator LAUTENBERG. Would you give us a little bit on the nature of the conflict between the corps' finding and your recommendation?

Mr. DOUGLAS. I will try, sir. I am a little uneasy in trying to read into what the writer of this letter actually meant. As I read that letter, and as I read that portion of the letter that you are talking about, where it said that such an impact would conflict with the basic tenets of fisheries management as seen in the Striped Bass Act, as well as the Magnuson Act, I conclude, sir, that the basic tenets that we are talking about, a tenet being a belief held in common by a lot of people, is that we in fisheries believe that fish are important, and that striped bass are important. Mr. McLeod in writing this letter is complaining to the corps that he does not believe that the proper importance was given by the corps in their environmental impact statement. I read this to be just one of a series of arguments that points out that there are laws that say that fish are important, and that the corps should have taken or should have written a greater importance into that environmental impact statement.

I don't read it quite as specifically as to take that one sentence out of context. I have to read it in the whole context of the letter, Senator.

Senator LAUTENBERG. Paragraph 3, page 2 of the letter:

> We can't agree that a project with an adverse impact of 26 to 33 percent of the young of the year striped bass would have no significant impact on that fishery.

These fish are members of the sole remaining stable East Coast population. Such impact would be permanent, repetitive and cumulative, and would conflict directly with the basic tenets of the fisheries management seen in Public Law 98-613, and the Magnuson Fishery Conservation and Management Act.

Therefore, is it your agency's position that the Westway construction—I am not asking you for comments on the highway plan or anything of that nature. We are looking today at the striped bass, and it is a major concern of mine and, of course, of the chairman's. Could the construction of Westway, the disturbing of that habitat, undercut efforts being made under the Atlantic Striped Bass Conservation Act to preserve the species?

Mr. DOUGLAS. Senator, any time you disturb habitat, it has a potential for, obviously, undercutting efforts to maintain a stable stock of any fish. I am not prepared today to go into detail as to the specifics of Westway and whether they are going to be a major problem or what the exact impact is. I didn't really come prepared to deal with that.

Senator LAUTENBERG. But we do know, and you acknowledge, that this is an important habitat. You said that in your testimony; right?

Mr. DOUGLAS. Yes, sir.

Senator LAUTENBERG. And we do know that it may be one of the few oases remaining, perhaps the only one right now, that looks like it is furnishing an area to procreate the species. Therefore, do we dare, without some idea of mitigation, some program for preservation, just march ahead? Is there a threat in this?

Mr. DOUGLAS. As I said, I think there is always a threat. I am sure the Senator is aware of the NOAA action and recommendation to the Corps of Engineers. I believe that in that recommendation, the very instance that you are talking about, of dealing with mitigation, is covered. In that instance, NOAA has said that it is necessary to monitor this situation. It is, in fact, a rather extensive group of experts, in fact, including our own folks as well as outside experts, who would form a group to monitor. If it is then determined that the loss of this habitat has been significantly deterimental to those striped bass, then mitigation efforts would take place.

Those mitigation efforts are not identified because, again, that same group of experts would design those same mitigation conditions. The Corps of Engineers, as you know, has put those conditions into the permit and that permit is currently in litigation.

Senator LAUTENBERG. There is no mitigation plan, that is for sure. What they do is they debate whether it will have a serious adverse impact, a significant adverse impact, and meanwhile we run the risk of closing out an entire species. That is the reach of this thing.

Mr. Kutkuhn, the Department of the Interior sent a letter to the New York District Corps of Engineers on January 4, 1985, which said, and I quote:

We concur with the finding of the FSEIS that cumulative impact from other planned and expected habitat alteration in the region would seriously threaten large stocks, and pose a major threat to the viability of the entire Hudson River and Atlantic Ocean coastal striped bass stocks.

I take it, then, you agree with the ASMFC concern in its view that there is a conflict between the construction involvement in the habitat and the Striped Bass Act?

Dr. KUTKUHN. Yes, sir, we do share the position as described by Mr. Douglas. We are very much concerned over the potential adverse impact on the Hudson River stocks of striped bass of the construction of that project as envisioned.

Senator LAUTENBERG. Have you seen any evidence that says we are going to be able to fix it if things don't go as planned?

Dr. KUTKUHN. I don't think that our state of knowledge is sufficient, sir, to say whether or not we have the capability of mitigating the damage that we think is potential should the construction proceed. There is some high risk. You asked earlier about the effects of that project on the total coastal effort, and protecting and restoring the striped bass as a resource. We feel that should this adverse impact occur on the Hudson River, it could indirectly affect efforts to restore the Chesapeake Bay stocks of striped bass along the coast in the sense that without the buffering effect of the Hudson River striped bass, there could be more pressure placed upon the residual from the Chesapeake run of striped bass that migrate to the same areas as do the Hudson River stocks.

Senator LAUTENBERG. I guess it is fair to say that neither one of you thinks that it is good policy to propose stringent fishing limitations on both recreational fishermen and commercial fishermen, while we tinker with the currently remaining fish habitat. This does seem to be in conflict, I think.

Dr. KUTKUHN. May I respond, sir?

Senator LAUTENBERG. Please.

Dr. KUTKUHN. We are very much concerned about the dual effect, if you will, of both the diminished habitat in terms of sustaining productivity of the resource, and also the effects of using that resource through fishing. I would say, in response to your observation, that we have to take action in both areas. We have to protect the resource and concurrently protect the use of it. Otherwise, regardless of how degraded the habitat might become and the productivity diminished, we are still obligated to protect the residual of the resource from overuse.

Senator LAUTENBERG. We could increase that limit of take to 48 inches, and if there is no satisfactory spawning ground, we can forget about the whole thing.

Dr. KUTKUHN. Logic so dictates, sir.

Senator LAUTENBERG. Thank you very much.

Senator CHAFEE. Thank you, Senator.

What do you think about a prohibition on an interstate sale of striped bass?

Mr. DOUGLAS. In my opinion, Senator, it would merely be another arrow of the quiver, so to speak, of trying to get at enforcing and dealing with keeping fishing pressures down on striped bass.

In all fairness, I personally have never found that trying to prohibit sales, or interstate sales, is all that effective as a fishery management tool. Again, I say, it is another arrow in the quiver, so to speak, but I don't know that it is as effective as other means that we could use to get at trying to reduce the fishing pressure.

Senator CHAFEE. The commercial fishermen up my way gripe, and I think legitimately, about the so-called sports fishermen who turn right around and sell their fish commercially. One way of stopping that, particularly if you have a moratorium on the commercial fishery, is to say to the so-called recreational fishermen, OK, you can eat your fish, or you can give it to your neighbors, but we are not going to have interstate sales of it.

I suppose that we could regulate intrastate sales, but it gets pretty complicated.

Mr. DOUGLAS. I think the answer is that if you had a moratorium on commercial fishing, then clearly you would be forced to define commercial versus recreational. One of the ways that you might then be dealing with that is the sale of that fish, whether it is interstate or whether it is even intrastate, as a definitional problem, Senator.

Senator CHAFEE. What do you say to that, Dr. Kutkuhn?

Dr. KUTKUHN. In terms of prohibition on interstate sale, I think I am agreeing with Mr. Douglas when I say that it does represent an adjunct to our law enforcement capability to have that prohibition. Above and beyond that, how exactly this would be instituted along the lines that we were just discussing, in other words, separating the recreationally caught and the commercially caught bass, from the standpoint of their use in commerce, is a very difficult question. It is not unique to the striped bass situation, it is a prevalent problem across the country as you may be aware.

Senator CHAFEE. Of course, we are only wrestling right now with the striped bass.

What would you say to an immediate Federal moratorium? We have a problem. Everybody acknowledges that the stocks, I think you said in your testimony, Dr. Kutkuhn, were the lowest in history, even though in your testimony, Mr. Douglas, you indicated that it may be creeping up a little bit, that may be just a little blip on the graph. What would you say to an immediate Federal moratorium, do you think that it would help?

Mr. DOUGLAS. I don't believe that it is needed, sir, in light of our assessment of what the Atlantic States are doing. As a matter of fact, I will take you back over a year to when the first proposal was made at the Federal level to deal with this. It was, in fact, a proposed moratorium, and Dr. John Byrne, speaking on behalf of NOAA at the time, indicated that even then he didn't think that a moratorium was required. We were in far worse shape then in terms of being able to regulate this than we are now.

Senator LAUTENBERG. You are saying, let poor judgment prevail.

Mr. DOUGLAS. Senator, that is your opinion that it was poor judgment then. I would not see the necessity personally. As a fishery manager for some years, I would not see the necessity, given what we now have on the books with the Atlantic States.

Senator CHAFEE. Except that the Atlantic States themselves have said that what they have got is inadequate, therefore, they are moving to amendment 3.

Mr. DOUGLAS. Yes, sir, and quite frankly, reading amendment 3, it is going to be so close to a moratorium in so many States that you will be awfully close to it.

Senator CHAFEE. How close are they to implementing amendment 3? Where does that stand? When does that have to go into effect?

Mr. DOUGLAS. Would you mind holding that question for Mr. Alperin who is executive director of the ASMFC who is on your next panel?

Senator CHAFEE. All right, we will save our fire for Mr. Alperin on that one.

What do you say to an immediate moratorium, Doctor?

Dr. KUTKUHN. I would have to concur with Mr. Douglas on the matter. Our position last year, even though there was a tendency in our thinking to go to a moratorium because of the logistical simplicity of it, we felt that the States deserved an opportunity, collectively with the help of the Commission, to demonstrate their ability to respond to the crisis. Of course, the act focused attention on the crisis and has worked well as a mechanism in so focusing the States attention.

We feel that the plan, particularly with the addition of amendment 3, which we have said in our testimony will be a very rigid requirement, will go a long way toward having the same effect, to a lesser degree, of course, of a full moratorium. In other words, it gives the States an opportunity to demonstrate that they can respond to a crisis, and collectively work toward resolving it.

Senator CHAFEE. As you know, and as I think everybody in the audience knows, the attitude of this committee is that we are reluctant to have the Federal Government impose moratoria because we would much rather have any suggestions, cures, or proposals come up through State agreement because of the belief that the ability of the Federal Government to impose something that we mandated and didn't have the cooperation of the States probably would be a failure. Unless we have the cooperation of the States, we just don't have enough Federal marshals and others to chase around catching every fisherman.

It has always been the attitude of this committee that we would be reluctant to jam something down the throat of the States, except if they just fail completely in meeting their responsibility.

Let me ask you this, Mr. Douglas. Do you think that we are on the right track, we meaning these proposals?

Do you think that this is going to solve the problem, or, if you were king, what else would you do?

Mr. DOUGLAS. I think that we are on the right track. As both you, Senator Chafee, and Senator Lautenberg, have indicated, we are finding that environmental problems, habitat problems are of such magnitude in terms of their importance to stocks such as striped bass that I would be reluctant to say that we are going to absolutely solve the problem by addressing strictly the fishing mortality. I think that there has to be a two-pronged effort.

What is being done now, and what is being done now through ASMFC is dealing with fishing mortality, then I believe that we are on the right track, yes, sir.

Senator CHAFEE. Doctor?

Dr. KUTKUHN. I would agree to a very large extent. As I have indicated already, there is a desperate need on the part of everybody working together to reduce the pressure still being applied to

the striped bass. It has been difficult for the States and for the Commission to identify measures that would have that effect short of a full moratorium and the potential for preemption by the Federal Government. That is why we give a lot of credit to what a lot of the States have done, starting with Maryland and Delaware, in not only instituting a moratorium, but instituting rather extensive closed seasons because we feel this has, in the long run, the greatest desired effect in relieving the bass of the pressure.

I would repeat what I said before and agree with Mr. Douglas also that however much we protect the resource from overuse, we still have the integrity of its habitat, its ability to sustain itself on its own to consider. Some of the environmental cleanup efforts that are now underway, particularly the concerted effort in Chesapeake Bay, will have to go a long way toward helping resolve and eliminate this crisis.

Senator CHAFEE. That goes to my final question. What sort of habitat work is being done? We are familiar with the Chesapeake Bay efforts. We are familiar with the Clean Water Act. We are familiar with all of the hazardous waste programs, RCRA and the rest of them. Is there anything specific that you folks are doing, working in connection with the habitat?

Let's start with you, Dr. Kutkuhn.

Dr. KUTKUHN. Yes, Mr. Chairman. We are a partner, along with a number of other Federal agencies, as you may know, including the National Marine Fisheries Service. We have the capability to do certain things out on the bay in the habitat or environmental area, and we have instituted an agreement with EPA, which has the Federal lead in that effort, to address certain matters that we have the capability for looking at. One of those of greatest concern to us has to do with the nonpoint source of the chemicals, agents that are making the bay perhaps more fertile than it needs to be and affecting its overall productivity.

We have established in the Fish and Wildlife Service a coordinator position to let the world know that we are serious in making our contribution to resolving this effort, and we also have a subcoordinator position with respect to the striped bass, which symbolically and otherwise, cannot be separated from this total effort.

Senator CHAFEE. Do you tie in the preservation of the wetlands with the striped bass habitat?

Mr. KUTKUHN. Absolutely. The Fish and Wildlife Service is as much concerned about the impact of what is happening in the bay on its waterfowl holding and production capabilities as it is on the capability of the bay to sustain the fishery resources, the striped bass, the shad, the herrings, and some of the other species.

Senator CHAFEE. Mr. Douglas, do you have any pearls of wisdom for us?

Mr. DOUGLAS. I would like to advise the Senators of one thing in NOAA that I believe is going to prove to be extremely important and helpful in getting at some of these habitat and pollution problems, and that is the recent formation, within NOAA, of a separate programs office, the Estuarine Programs Office. It was set up out of recognition that estuaries, such as the Chesapeake Bay, which is a large estuarine system, are in particular need of study and as being

particularly important in their contribution to habitat, to anadromous species.

At the present time, the Estuarine Programs Office is dealing with background information, background data on a variety of estuarine systems. They have, in fact, put on a couple of programs for the public, and for other interested parties, where they have shown and explained what some of the background data are relative to certain estuaries or at least suggests where the problems are. We haven't got to the point yet where we are able to determine some of the solutions. I believe that just the act of creating this Estuarine Programs Office, it is an NOAA office—it is housed within NMFS, but it is an NOAA effort—I believe is a significant step taken by our agency to address this problem.

Senator CHAFEE. Thank you.

Senator Lautenberg.

Senator LAUTENBERG. Dr. Kutkuhn mentioned shad, and, Mr. Douglas, you talked about the estuarine programs. Looking at what is happening in the Delaware River between New Jersey and Pennsylvania, shad fishing is better they say, by one family who has fished there for 70 years. There is more shad seen now than they have seen in the 70-year history. You can see what happens when you start to cleanup that pollution. The Hudson River shad, I am not so sure I am anxious to eat it, but it is growing.

Very quickly, just a couple of questions about the quantities of catch. I didn't realize that the recreational take was so substantially higher, twice as much as the commercial, and that is because of the prohibitions on commercial which have been more effective and a little bit easier to monitor. The restrictions are a little bit more rigidly drawn.

What was the recreational catch, either one of you, probably Mr. Douglas, in that peak year 1973, do you know?

Mr. DOUGLAS. I don't have that with me, sir.

Senator LAUTENBERG. Do you have any comparison?

Mr. DOUGLAS. I would have to remind the Senator that getting a handle on recreational catch has only recently been something that we have been able to do. I doubt that we would even submit to you that data we have for 1973 is valid at all on recreational fish. Historically we have collected commercial statistics, and only in the last 5 or 6 years have we gotten what we think are meaningful recreational catch statistics.

Senator LAUTENBERG. You did say that the information you have is of recent vintage, I guess, 1984, of 5.3 million pounds of recreational fish versus 2.7 of commercial fish.

Mr. DOUGLAS. Yes, sir.

Senator LAUTENBERG. Thank you very much. I appreciate it.

Senator CHAFEE. Thank you very much, gentlemen.

Mr. DOUGLAS. Senator, could I make one clarification. My staff, who likes to make sure that I am crystal clear, feels that I may have been less than crystal clear in answering one of your questions, that being the very first one, when you asked whether the emergency striped bass study should be continued.

I think I said, and I certainly meant to say that we have to continue studying the striped bass, but I make no selection as to what vehicle we use to do that.

Senator CHAFEE. OK, whatever that means.

Mr. DOUGLAS. Thank you.

Senator CHAFEE. That was cautious testimony, Mr. Douglas.

Mr. Balderson of the Westmoreland County Watermen Association, accompanied by Mr. Haynie and Mr. Brown. If you gentlemen would come up. Mr. Russell, president of the Striped Bass Emergency Council in Boston.

I understand that the Virginians got up very early in the morning to be here; am I correct?

Mr. BALDERSON. Yes, sir.

Senator CHAFEE. At what time did you get up?

Mr. BALDERSON. At 3 o'clock this morning.

Senator CHAFEE. Anybody who gets up at 3 o'clock is deserving of all the consideration we can give you. We thank you for coming.

Mr. Balderson, we are pretty relaxed here today, we don't have that many statements, so you just go ahead and proceed. Read your statement, if you wish, or you do whatever you want. Go ahead.

STATEMENT OF WAYNE BALDERSON, PRESIDENT, WESTMORELAND COUNTY WATERMEN ASSOCIATION, ACCOMPANIED BY MEVERELL HAYNIE, PRESIDENT, VIRGINIA WATERMEN ASSOCIATION, AND ROBERT T. BROWN, PRESIDENT, ST. MARY'S COUNTY WATERMEN ASSOCIATION

Mr. BALDERSON. Thank you.

Mr. Chairman, committee members, ladies, and gentlemen.

My name is Wayne Balderson. My father was a waterman in Virginia, and so were my father and my grandfather and my great grandfather. Until recently, I, too, was a waterman who caught rockfish—or striped bass—for a living.

I am here today to talk with you about the regulations spawned by the Studds bill that Congress passed last year.

I want to thank you, Senator Chafee, for giving me the chance to tell this committee how watermen, fishing in the Chesapeake Bay and the Potomac River, feel about the current rockfish regulations.

By way of introduction, I am president of the association of watermen in Westmoreland County, VA. I am also here today on behalf of the Virginia Watermen Association. With me are Meverell Haynie, president of the Virginia Watermen Association, and Robert T. Brown, president of the St. Mary's County Watermen Association in Maryland.

The Studds bill and the resulting regulations have resulted in substantially reduced landings of rockfish. It appears that the population is really making a comeback. However, the Studds bill and the State regulations could be improved upon to both quicken the comeback of the rockfish population and spread the burden imposed upon watermen by the regulations in a more equitable manner.

I am not here today to urge a roll back of the regulations so that we can fish tomorrow. Of all people, we the watermen seek to protect the rockfish, it is our livelihood. All that the watermen in the Chesapeake Bay want to do now is to be treated fairly. Congress is the only group that can ensure that equal regulations are made by the affected States.

By equality, I mean that the regulations of each State must achieve the two goals of: First, imposing roughly equal burdens on watermen in each State; and, second, obtaining from each State an approximately equal contribution to the long-term health of the rockfish. Neither goal is achieved, however, by the current mix of regulations growing out of the Studds bill, the Atlantic States Marine Fisheries and the States.

We urge you to take action to help the Commission develop State guidelines that will ensure the long-term health of the rockfish and determine how the burden of nonfishing should be borne by the States. What the Commission needs is time and information.

Therefore, we recommend a short-term U.S. moratorium on rockfish—a year or so—so that the Commission can do this. Only Congress can give the Atlantic Commission this authority. Such a moratorium will speed the return of the rockfish and will, in the long term, help watermen from all over the east coast, not just Chesapeake Bay watermen.

Before I offer suggested ideas the Commission should consider, let me describe more clearly the problem and why the watermen in my part of the country are upset.

As I said, until recently I was making my living catching rockfish. Now the expensive tools of my trade sit idle—my boat is docked and my sets are in boxes. I want you to know that I care deeply about the Chesapeake Bay and the Potomac River. Being a waterman is an independent and free way of life. It gets in your blood, I guess. My great-grandfather, Ranzell, was a waterman before the Civil War, and the Baldersons have been watermen ever since.

I was about 12 when I joined my father on the Potomac River. I worked my way up, saving money and buying equipment so I could fish on my own. Last year, I was catching rockfish and also buying them from other watermen to sell to markets up and down the east coast.

Now, all of my equipment is useless. I have got $10,000 worth of nets that I can't keep up if they don't produce. Even if I could catch the rockfish, there is no market for them. The stores and the marinas are hurting in Westmoreland County, too, as they have felt what you might call the ripple effects of the watermen like me being put out of business.

But, I didn't come here to complain. I came here because I care deeply about the bay and its fish, and because I think we can both protect the rockfish and, in the long run, put the watermen back in business.

The Studds bill and the regulations it has spawned have selectively closed the market for rockfish. If I could catch all the rockfish I wanted today, I still couldn't find anyone to buy them because seafood companies are scared to buy rockfish. That is not surprising because there are more than 140 different State restrictions on the catching and possession of rockfish.

Buyers can be prosecuted for purchasing illegally caught fish. Because the regulations are so complicated, seafood companies are refusing to buy any rockfish at all.

Let me show you how the regulations are unfair—minimum size limits, seasons, and catching methods differ from State to State. As

you can see from the chart attached to my testimony, Maryland and Delaware, for example, each have a total moratorium on rockfish, while the New England States have various regulations allowing larger fish to be caught either throughout the whole year or different portions of the year.

Most States north of Delaware, including your home State of Rhode Island, Senator Chafee, have minimum size limits of 24 inches, but New York has an 18-inch minimum in tidal waters and a 24-inch minimum in marine waters. This means that the New York watermen, depending upon where they catch the rockfish, can fish and market their catch when Rhode Island watermen cannot. However, they may not be able to sell their catch because nobody knows where the rockfish were caught.

Seasons are unequal too. As you can see, New York's season is open from March 16 to November 30, but the neighboring State of Connecticut has an open season from April 16 to December 14. Virginia and the Potomac River, on the other hand, have an open season from June 1 until November 30. In Virginia and the Potomac River, we have an 18-inch minimum size limit, but rockfish over 18 inches are usually only in the rivers during the spring, when the season is closed.

In Connecticut, you can sell 24-inch or larger rockfish as long as they were caught in the State. In New York, rockfish may not be sold between January 1 and May 7, but in Rhode Island, they may be sold all year.

These examples show how the differing rockfish regulations were created because the Studds bill merely set a goal of 55-percent reduction of effort, whatever that means, without any real clear scientific consensus or direction from Congress as to what level of protection is needed for the rockfish, and how each State should seek that goal.

What I am saying is that State regulations need not be the same, but the current inequalities are putting me out of business without reason. The current maze of regulations is not in touch with the real world. For example, Chesapeake Bay watermen can't catch rockfish so that the larger ones can spawn, but these same large rockfish can be caught in coastal waters in States and Canadian Provinces further to the north. This is not only unfair, but once caught these larger rockfish can no longer return to the spawning grounds in the bay. I might add that these same rockfish that are being caught by foreign vessels, including Russian trawlers, off the coast of our most northeastern States and Canada.

Besides being unfair, the current regulatory scheme will not bring the rock back faster. A more equitable solution would be for the entire east coast to bear the ultimate burden, that is a moratorium, for a short time, perhaps for a year, starting January 1, 1986, while the Commission gets on with the business of fashioning long-term guidelines supported by scientists, fishermen, and commercial fishermen for the States to follow.

By preventing the landing of rockfish in all States, more fish of spawning size will return to the key spawning areas—the Hudson and the Chesapeake Bay. This moratorium would be the quickest way to get the rock population up near the size that scientists think is necessary for its long-term survival. In addition, all water-

men would contribute to this effort equally, nobody could catch rockfish. And, in the end, all watermen would benefit.

During this year-long moratorium, the Commission could be directed and funded to develop guidelines for each State that would achieve the two goals that I said earlier: First, equal contribution to the long-term health of the rockfish; and, second, imposition of a roughly equal burden on watermen in each State.

Obviously, the guidelines for final regulations in each State with spawning waters might be different from those for a State with only coastal waters, but an informed effort toward achieving these goals must be made.

The interstate fishery management plan that the Atlantic Commission is operating under will not do this, nor, unfortunately, will amendment No. 3 to the plan, which was adopted recently. Amendment No. 3 forced Virginia and the Potomac River Commission to raise their minimum sizes to 18 inches, but, as I said earlier, rockfish over 18 inches are not in the bay during the open season. When they leave the bay, they go north, and the larger fish can be caught during the open seasons of the Northern States and Canada, preventing their return to the Bay.

No one is certain that the amendment will increase the rock populations because no one knows how many rock are needed to return to their spawning grounds. But once again the Chesapeake Bay watermen are now called upon to bear an unequal burden to promote rockfish for everyone.

In conclusion, the watermen of Chesapeake Bay, therefore, would like to see this subcommittee ensure that the rock is protected, no matter what waters, and that all watermen in the United States share equally in this effort. If it means that we need a moratorium on rock fishing to give the Atlantic Commission, scientists, sports fishermen, and commercial fishermen time to better understand rockfish migration, and develop long-term State guidelines for the regulation of rock, then that is in the best interest of the rock and all watermen.

Senator Chafee, we believe that the immediate moratorium you proposed last year in the Coastal Migratory Fish Conservation Act was a good approach. It will meet our concern if it is short-term and if it includes a directive to the Atlantic Commission to spend the time provided by the moratorium gathering scientific information and developing guidelines that would lead to a more equitable effort to protect the rock. The rock is an important natural resource of the Eastern United States. Unlike a tree or a hunk of coal, it doesn't sit in one State, but migrates up and down our coastal waters and tributaries. Only Congress through legislation as proposed by you last year can protect this great fish.

In closing, we support the suggestion that you made earlier this morning, Senator Chafee, for an immediate, short-term moratorium, while the Atlantic Commission rewrites the management plan so that it protects the rockfish and is fair to everyone.

I thank you, Senator Chafee.

[An attachment to Mr. Balderson's statement follows:]

CURRENT STRIPED BASS FISHING REGULATIONS*

July 19, 1985

	Virginia	Maryland	Potomac	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut	New York		Pennsylvania	New Jersey	Delaware	No. Carolina
State Authority	Marine Resources Commission	General Assembly and Dept. of Natural Resources	Potomac River Fisheries Comm (including industry and gov't. reps from MD and VA)	Maine Legislature and Commissioner of Marine Resources with Marine Advisory Council	Director of Fish and Game Commission w/Advisory Committee of Shore Fisheries	Director of Marine Fisheries Advisory Commission	Marine Fisheries Council	Department of Environmental Protection	Department on Environmental Conservation Tidal: 987205 Marine:		Pennsylvania Fish Commission	Department of Environmental Protection and Marine Fisheries Council	Department	Marine Fisheries (no region and Director of Fisheries
Moratorium	None	Yes	None	None	None	None	None (Note: bar net temporarily in fall - 81)	None	None	None	None	None	Yes	Partial (No ocean catch beginning Oct. 84)
Minimum Size Limit	18" fresh 24" salt	16" (Bay) (24" salt)	18"	28"	18" (Note: Fish and Game Comm. may now have power to regulate minimum size)	24"	24	28"	18"	24	28	24" (Delaware Bay, Hudson River, Raritan) 28" (ocean and coastal bays)	18" fresh (24" salt)	18" fresh 24" salt
Maximum Size Limit	40	(32")	36	None	Only 1 over 32"	None	None	None	None	None	None	None	None	None
Creel Limit	5/day	15/day?	5/day	4/day	1 over 32", 2 between 16" & 28", total of 4	1 per day per angler	2/day with fixed nets, trawls and angling	None	None	None	2/day	5/day (proposed)	1 in ocean, 6 fish between 18" and 28")	8/day, plus extra and Albemarle Sound
Season	Open season 8/1 to 11/30	(Complex rotations)	Open season 8/1 to 11/21	Open all year	Open season 6/1 to 10/31	Open season 8/1 to 9/30	Use of floating fish traps prohibited between 12:01 and sit and Others	Open season 4/16 to 12/14	Open 2/10 to 11/30	Open 2/10 to 11/30	Open all year	Open season 2/1 to 12/31	1 May closure of spawning areas, plus ban on commercial anchor netting between 5/10 to 9/30)	Open all year
Methods	Troll or drag nets	Rail except purse seines and otter trawls)	No new gill net permits licensed after 12/1/83	Hook and line only in coastal waters	Hook and line only	Hook and line only	All methods	Hook and line only	Restrictions of mesh size, season, location of gill nets	Any unusual method	Hook and line only	Hook and line and bowfishing only		All methods except for river specific restrictions
Disposition	No sales out of season	(Sales permitted w/license only 8/1 to 11/30)	Sales permitted w/license	No sales of striped bass caught within state borders	No sales regardless of origin	Sales only between 8/1 & 10/6 w/$10.00 fishery permit	May be sold under special hook and line license or under standard commercial license	All striped bass sold in state must be 28", no in-state fish sold	No sales	Sales permitted with license No sales 1/1 to 5/7	Commercial fishing is illegal, may be sold if not caught in Penn.	Sales permitted if of legal size	(Sales permitted with license)	No sales between 4/1 and 11/15
Sport Fishing License	None for tidal waters	(None, but Chesapeake Bay license req'd)	None	None	None	None	None	None	Required	None	Required	None required for salt water	None	Required to inland and some tidal waters
Commercial Fishing License		(Req'd for striped bass sales)	MD & VA residents licensed by PRFC	Required for sales	See Disposition Section	License req'd to sell catches exceeding 100 lbs plus one fish daily	Required to operate floating fish traps, gill nets, and trawls	None	License required	License required	None	Not required for sale of fish	(Flat fee plus gill net footage charges)	Variable by boat size
Additional 1980 Information - 5,800 jobs w/$90 million actual spending	1983 Landings 94,000 lbs 1984 Landings 15,000 lbs	1983 Landings 359,000 lbs 1984 landings 688,000 lbs	1983 Landings 184,000 lbs 1984 Landings 783,000 lbs			1983 Landings 230,000 lbs 1984 Landings 104,000 lbs	1983 landings 181,000 lbs 1984 landings 54,000 lbs 5-inch minimum stretch mesh required on gill nets w/min. of 2,000 apart and 600 max. length	1983 landings 8,800 lbs 1984 landings 5,000 lbs	1983 landings 276,000 lbs 1984 landings 940,000 lbs No fish may be sold if caught on Hudson River (PCB contamination)			1983 landings 19,000 lbs 1984 landings 10,000 lbs	1983 landings 20,000 lbs 1984 landings 27,000 lbs	1983 landin 341,000 lb 1984 landin 611,000 lb

*Prepared by Hunton & Williams. Sources: Speir and Perra, Striped Bass Laws and Regulations, Maine to North Carolina (July 1, 1985); Fairbanks, Summary of Science and Statistical Committee Proceedings (May 30, 1985).

Senator CHAFEE. Thank you very much, Mr. Balderson, and I appreciate that excellent statement.

Do the gentlemen with you—I know Mr. Russell has a statement—Mr. Haynie or Mr. Brown, do you have anything that you wish to add to the statement?

Mr. HAYNIE. Yes, sir, just a short one.

Senator CHAFEE. Sure, go to it.

STATEMENT OF MEVERELL HAYNIE, PRESIDENT, VIRGINIA WATERMEN ASSOCIATION

Mr. HAYNIE. We don't need the Studds bill because what it is doing is putting a hardship on the watermen and causing us to act as a spawning ground for the raising of fish, and then they go north and there they may be caught by others. They don't get a chance to come back any more.

With a 1-year moratorium on the whole complete east coast, it will let the fish go north and also come back to respawn again. So the Virginia Watermen's Association is for that 1-year moratorium on the total east coast.

Senator CHAFEE. You represent the entire State of Virginia. You are president of the Virginia Watermen Association, and Mr. Balderson is the president of the Westmoreland County Watermen Association.

Mr. HAYNIE. Yes.

Senator CHAFEE. Mr. Haynie, do you have anything further?

Mr. HAYNIE. During the year of the moratorium, the fishermen and the scientists could form an advisory board to work with the commissions from all the States to learn more about the rockfish while that 1-year moratorium is on.

Senator CHAFEE. So you are in complete agreement with Mr. Balderson.

Mr. HAYNIE. Yes, sir.

Senator CHAFEE. Mr. Brown.

STATEMENT OF ROBERT BROWN, PRESIDENT, ST. MARY'S WATERMEN ASSOCIATION

Mr. BROWN. Mr. Chairman, committee members, ladies and gentlemen.

My name is Robert T. Brown, and I am the president of the St. Mary's County Watermen Association. I am a commercial fisherman, as it has been a tradition in my family heritage.

In my home State of Maryland, we are presently under a moratorium. I also fish the Potomac River, which has regulated itself almost into a moratorium situation by a minimum size of 18 inches and a closed season from December 1 through May 31.

At the present time, it is legal for me to catch rock in the Potomac River, but I am not allowed to land these fish in Maryland because of Maryland regulations.

I do not want to see the Chesapeake Bay become a nursery for the east coast. What I mean is, we raise them, and you catch them. We spawn the rockfish here, and we have a right to harvest these fish.

Maryland has done her share. Let us have a short-term total moratorium of 1 year, along the entire eastern seaboard.

I would like to see an advisory board, consisting of commercial fishermen, sports fishermen, from all the States, to assist in revising all the regulations so that everyone, both sport and commercial fishermen, may have a viable rockfish fishery. But this will not work alone. Congress must work now, and not tomorrow, to rid our waters of pollution.

Thank you, sir.

Senator CHAFEE. Thank you, Mr. Brown.

Mr. Russell.

STATEMENT OF DICK RUSSELL, PRESIDENT, STRIPED BASS EMERGENCY COUNCIL

Mr. RUSSELL. Mr. Chairman, and ladies and gentlemen.

As president of the Striped Bass Emergency Council, which is a nonprofit organization under the umbrella of the National Coalition for Marine Conservation, I am privileged to address to you my concerns today about the effectiveness of the current management and restoration effort by the States.

First, let me say that the congressional bill is a landmark, I believe, to save the endangered striped bass, but the fear of myself and many other fishermen who have known the magic of the bass was then, and is now even more so, that the recommendations of the State fisheries directors are not strong enough to ensure the striped bass's eventual comeback.

It saddens and it angers me to report, and we have already heard this earlier today, that several States do not seem to be complying with the existing restoration plan. Mr. Randy Fairbanks, who is the assistant director of Marine Fisheries in Massachusetts, and the chairman of the Striped Bass Board's Scientific and Statistics Committee, admitted to me in a conversation this week that several States cannot quantify whether they are really cutting back their fishing effort by 55 percent because the proper data does not exist.

He said that the Striped Bass Board, nonetheless, felt that they should be judged as having complied because their efforts were being made "in good faith." But, of course, my understanding of the Federal plan is that any State which is not in full compliance should then come under a moratorium on any possession of striped bass in its waters.

I would like to offer a few specifics, beginning with the State of New York.

In 1984, New York's harvest of striped bass represented 40 percent of the total for the entire east coast, which is higher than any other State's. A supposedly important part of New York's restoration plan is a seasonal closure of slightly more than 5 months, from December 1 through May 7. But according to the historical data, striped bass are rarely even present in New York's coastal waters at that time, and reported landings over this timeframe over the past 10 years have averaged about 7 percent of the State's annual total, and many of those are Hudson River bass.

There is no closure at all during the months of October and November, when the full run of the Chesapeake fish occurs and when over 75 percent of the recorded landings customarily takes place, nearly all along the east end coastal waters of Long Island. There, the large female striped bass, already extremely scarce and the primary brood stock for the Chesapeake, are the targets of the commercial haul seiners and the hook-and-line fishermen.

The haul seiner, upon removing the catch, focuses on the marketable fish, and the undersized striped bass are simply thrown back to die. I have talked to many people who have told me about seeing piles of small dead striped bass where a haul seine operation has taken place.

What we face here is a terrifying thing because many fishermen, including myself, have noticed that large and small striped bass are schooling up together this summer, and this is the first time that this trend has been predominant. When the same thing happened in the bluefin tuna fishery, it was a sign that the entire species was in peril, for under normal circumstances large fish and small fish tend to swim in separate schools. This increases the likelihood that hundreds of striped bass not yet of spawning age will be sacrificed along with their parents to the Long Island fishermen this fall, and will be simply thrown back.

Some New York officials say that the recent extension of the State's PCB-related commercial fishing ban in certain areas will serve to alleviate these kinds of problems. But in the closed areas of New York, only 15 percent of the State's recorded landings have come from there, and these are mainly Hudson River fish.

So the closure will probably have a reverse effect on the survival of the Chesapeake fish since it will increase fishing effort in the waters that do remain open, the coastal waters that have the highest concentration of the migrating Chesapeake bass.

Potential devastation in New York assumes, of course, that the same fish have not already been hit too hard in Massachusetts or Rhode Island as they start their fall migration south. Commercial fishermen in Massachusetts are allowed open season on the larger striped bass from the beginning of June to the end of September. In neighboring Rhode Island, the new restoration plan somehow eliminates any limit on the gillnet fishery, which is the most lethal method there is.

Rhode Island officials say that 80 percent of the gillnet catch is under 24 inches anyway, so with the minimum size limit in place this, itself, amounts to a substantial reduction. But the entire point of the restoration plan is a 55-percent cutback over and above the 24-inch minimum, which Rhode Island refused to even implement until their back was to the wall of the federally imposed moratorium this summer.

Under the new program, gillnetters will surely catch more bass than they did last year when a two fish per day limit was in place.

Last fall, of course, Maryland took the laudatory step of imposing an indefinite moratorium on striped bass. But what possible good will this do, and, politically, how will they be able to maintain it when so many other State regulations remain so vastly inconsistent.

Amendment 3 to the restoration effort recommends that the minimum size limit in each state be raised periodically to protect the 1982 year class from the Chesapeake Bay. The first step would be a 28-inch minimum size requirement by January 1, 1987. This seems to me to be putting all of one's eggs in a very shaky basket.

First, no one knows how badly the 1982 fish, the only remaining near average hatch, were hit by Maryland watermen and others last winter before the State moratorium went into effect.

Second, it is clear, as I have already said, that haul seines and gillnets will continue to catch and waste striped bass that are illegal to keep.

Why 1987? Why not act immediately to protect any stripers that are approaching or within the spawning age for the first time?

In the face of a growing resource catastrophe, the States' pleas of lack of data and good faith gestures, and continued foot-dragging on moving faster in protecting the striped bass resource, is a clear indication that more involvement by the Federal Government is necessary.

The meetings of the striped bass Scientific and Statistics Committee of the ASMFC are no longer even open to the public or to the press. Why is the data from these meetings, upon which decisions are based, not a matter of public record? The striped bass is a national resource, and not a private one. It does not belong to a scientific committee any more than to a particular group of fishermen.

Unfortunately, I believe, Senator, that all the time and effort expended by the Congress toward ensuring the survival of the striped bass is being undermined by State fisheries managers who resent any Federal role in scrutinizing their activities. I was shocked to hear this morning that no review process of each State's individual action was taken by the Federal Government for I thought that under the bill this was supposed to happen. There would be an evaluation of each State, and any State that didn't comply would then have a moratorium imposed.

I think that it is time for the process to be taken out of the hands of the States, and for the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to evaluate the States' data and follow through with regulations based on the findings of their scientists. In their evaluation of the Interstate Fisheries Management Plan for striped bass, their recommendation to the States is that, at a minimum, the plan be amended to incorporate either a moratorium on the harvest of Maryland produced striped bass in Chesapeake Bay, along the coastal migratory pathways of these fish, or both.

More than ever, I think a temporary coastwide moratorium remains the only real solution. In this morning's Baltimore Sun there is an article by Tom Horton, the evironmental writer, who reports that preliminary results of the annual Chesapeake young-of-the-year survey appear grim once again, and this is despite a dry spring which means little rainfall. It means that, although acid rain is part of the problem, perhaps overfishing is more of a problem. There were just not that many fish spawning this year.

What happens if we allow the remaining few spawning fish to be caught, with a dearth of smaller striped bass coming along to take

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their place? Congress should mandate a moratorium, with discretionary powers on when to lift it being left to the two Federal fisheries agencies working in consultation with the Atlantic States Marine Fisheries Commission.

The Federal agencies should have the power to evaluate and alter any plan by the States to gradually reopen the fishery once the striper population shows signs of resurgence.

Short of a moratorium, the only alternative is a coastal ban on any commercial sale of striped bass. That would, of course, eliminate the incentive of the Rhode Island gillnetters and the New York haul seiners, and others, to continue focusing on the lucrative, imperiled supply of fish.

I also feel strongly that the Emergency Striped Bass Study should be continued so that the population can be properly monitored, and the effects of acid rain and other pollutants analyzed for their effect on the systems.

Before closing, I would like to voice one final concern. This has to do with the Westway landfill which, for the sake of a handful of New York real estate developers, will conceivably wipe out as many as 50 percent of the Hudson River's juvenile stock of striped bass.

The Hudson stock, although they don't migrate as far, are the only remaining viable coastal population. It is simply insane for the Federal Government to subsidize the destruction of such a crucial habitat when it is spending millions in studies and forcing coastal fishermen to make substantial sacrifices to preserve the same species.

Recent proceedings in Federal court have revealed that the key witness for the U.S. Army Corps of Engineers, a marine biologist who concluded that the landfill impact on the striper population would be minor, had his study financed by Westway's leading development advocates.

Directly south of the proposed landfill, Battery Park City has already removed acres of marine habitat, yet this region has never even been developed. The U.S. Congress should immediately pass a bill to block funding and construction of the Westway landfill, and let the developers concentrate on what has already been spoiled.

The Westway situation is just another example of what the striped bass is up against in its fight for survival on this planet. The concerns of many people, fishermen and environmentalists, and others, have brought this battle to your door, gentlemen. I can only thank you for your time and your interest, and I can only hope that the Federal Government will see fit to take an even stronger position on this matter of such vital importance to all of us.

Senator CHAFEE. Thank you very much, Mr. Russell.

Mr. Balderson, in your statement "It appears the population is really making a comeback." We are always glad to hear that, but you heard what Mr. Russell said, the way he looks at it, it isn't so. What do you see that makes you so modestly encouraged? I will admit you didn't say that everything is honky dory, but you said that it is making a comeback.

Mr. BALDERSON. It is making a comeback. In December, this past December, I caught 15,000 pounds of rockfish in my gillnets. The

Potomac had an abundance of rockfish. As you can see by the chart, there was more rock produced in the Potomac River than any other river or State, 780,000-some pounds.

Senator CHAFEE. What kind of stock was that? You heard what Mr. Russell was saying. Were they older ones, or were they young ones?

Mr. BALDERSON. This stock ran four or five different year classes. We have been in conflict with the scientists over this, but we want to go with the scientists, and what they believe. But the fish we have seen, they were 4, 5, 6 pounders, and earlier they were 2 to 3 pounders.

Senator CHAFEE. What do you say to that, Mr. Russell?

Mr. RUSSELL. This is what I say about banking on the 1982 year class. Before the moratorium went into effect, a lot of the fish were hit very hard, and we don't know how many are left. They haven't started to spawn yet. I think we saw what happened with the 1978 year class which was the only other near average catch in the last 10 years, and it is gone. It has been fished out, first by the watermen in Virginia and Maryland, and now along the coast.

We are seeing more small fish off Massachusetts this year than we have in quite a while, but they are schooling up and I think it is a dangerous sign. We still need much stronger action.

Senator CHAFEE. What do you say, Mr. Haynie, do you agree with Mr. Balderson that things have somewhat improved?

Mr. HAYNIE. Yes, sir, I do.

The statement that the young man made about the watermen catching the fish, the statement was made earlier that sports fishermen caught more fish than the watermen did. I think that ought to be straightened up a little bit.

I think that there were more fish last year than there have been in the last 4 or 5 years.

Senator CHAFEE. What about you, Mr. Brown?

Mr. BROWN. Mr. Chairman, there have been more fish starting last fall. I started catching rockfish last summer in a seine, and I stopped because they were not of legal size. Later on in the fall, I was catching rockfish in my pound nets, and they were ranging from 10 inches to 18 inches. Every time I would throw one in the boat, I would throw two back overboard. It was more than 1-year class. Biologists say that it is only a 1-year class, but how can a 10-inch fish and an 18-inch fish come out in the same year class? It looks like it is almost impossible.

I had a very good catch last fall. The bulk of our fish that we catch in the pound nets and the seines in the summer will not go but 17 inches at the most. Our fish average around 14 to 16 inches. More than once last year, I had to spend 4 and 5 hours just culling these rockfish. There were twice as many returning than going into the boat.

Senator CHAFEE. What happens when you get them too small, and the fisherman handles the fish and throws it back, will that fish survive?

Mr. BROWN. It depends a lot on weather conditions. If you have good weather, you handle the fish right, you will have very, very little mortality. If you get caught in a storm, and you have fish bundled up, you will have a high rate of mortality. Last year, in

the pound nets, it was very, very minimal. I had marine inspectors come by me from time to time, checking me, and they were surprised at how many were surviving. They were trying to figure out how many were dying, and they were riding around on the river looking for fish floating and they weren't finding any. If you have the conditions right, you don't have much mortality.

Senator CHAFEE. Do you agree with that, Mr. Balderson?

Mr. BALDERSON. Yes, Senator. A gillnet of a certain size will not catch but a certain size of fish.

Senator CHAFEE. A gillnet that would let an 18-incher or a 24-incher through it, what can it catch of what is left?

Mr. BALDERSON. There are 20- and 30-pound rockfish, depending on what State you are catching them in. In New York, you can catch a 50- to 75-pound rock. My grandfather caught one that weighed 175 pounds in 1929.

Senator CHAFEE. That is a record, isn't it?

Mr. BALDERSON. Yes.

Senator CHAFEE. What confuses me is, if your had a complete moratorium on the rockfish, what do you do about the netters out there, what Mr. Russell calls the commercial haul seiners? What do they do? They are out there to catch other fish.

Mr. RUSSELL. Senator, I do think that the key, during certain times of the year in certain areas, on, which striped bass is worth a lot of money. But they could certainly move to other areas to catch other fish. That is what they are being forced to do in Maryland with a moratorium. You are still fishing, right?

Mr. BROWN. Mr. Chairman, right now, I am commercial seining trying to catch spot and crockers. What we are doing, we are fishing in areas that normally we don't catch rockfish. We will stay off the shelf, the deep edges. We will fish closer to shore to try to miss them because right now if I am caught with one rockfish in the State of Maryland, I am under a moratorium in the State and I am not allowed one, I am in violation.

The other night, I hauled and I had about 1,800 pounds of rock and about 200 pounds of spot, and I had to turn it all loose. I have been going out once or twice a week trying to fish, but I haven't had any luck this year.

Senator CHAFEE. You caught 1,800 pounds of rockfish and 200 pounds of the other?

Mr. BROWN. Yes, that is about what it was.

Senator CHAFEE. You dumped the whole load back?

Mr. BROWN. I dumped the whole load loose because, No. 1, there are too many jelly fish to catch that amount of fish, and I don't get that much out of it. You just can't handle a volume of fish like that.

Senator CHAFEE. As I get the recommendations from you, Mr. Russell—Mr. Balderson's recommendation is very clear, a moratorium all up and down the coast of perhaps a year. You say, a temporary coastwide moratorium remains the only real solution.

Mr. RUSSELL. I would say, to make that more specific, Senator, that it should be, to have any effect, for more than a year. It should be certainly at least 3 years.

I also question the figure raised earlier that recreational fishermen caught 5 million pounds of striped bass.

Senator CHAFEE. Twice as much as the other.

Mr. RUSSELL. I would be very curious to know what that is based on because as a recreational fisherman who knows recreational fishermen up and down the coast, I sure haven't heard about many of them catching many striped bass, unless the recreational fisherman is defined as someone who can also sell his catch. Purely recreational, we are not catching that many fish.

Senator CHAFEE. This is 1980 that the figure was for.

Yes, Mr. Balderson.

Mr. BALDERSON. There were commercial licenses issued to sports fishermen on the Potomac, so they could catch and sell rock, and they were catching from 150 to 300 pounds per boat all last fall on the Potomac River.

Senator CHAFEE. I am sympathetic to what you are asking, particularly Mr. Balderson's point, I think, was a very valid one that it is completely unfair for Maryland watermen or Virginia watermen to be bearing the brunt of this when the fish go north and east, and there the Long Island fishermen wait for them and catch them. It doesn't seem fair, and I think the points you made are very valid.

Then, of course, it gets down to our next witness who is Mr. Alperin, and what they are doing in the Commission. I think they are letting some of these States off easily. It may well be that my State is being let off easily. As Senator Lautenberg said, he is not for sin in any area, and neither am I. I don't want our section to get an advantage over the southern fishermen at all.

What do you think about the problem I mentioned earlier, the enforceability. It is far better, I have felt all along, to have this come from the States through the Atlantic States Marine Fisheries Commission, rather than for us to sit up here, big brother, telling everybody what to do, because the enforcement of this is difficult. If we get the States angry, and the fisherman, who are represented on the Commission, angry, then no one is going to abide by it, and we don't have enough enforcement people in Fish and Wildlife to run around and check on every waterman.

Mr. BALDERSON. Senator, we have 140 different regulations that are in effect—140 different ones right now. I figure that this fall, if they let us fish, the other buyers and myself could possibly fish 2 million pounds of rock, but there is no market for rock. We couldn't pay 20 cents a pound for it. I am a buyer of fish also, and we couldn't pay 20 cents a pound for them because they could not be sold.

Senator CHAFEE. I find that curious, you go into a restaurant and there is rockfish on the menu.

Mr. BALDERSON. In the State of Virginia, it is legal to sell rockfish. In the State of Maryland, it is illegal to sell rockfish. But the law is so conflicting. Here in Washington, DC, you have a buyer named Claxton Seafood, and this man sells—I am sure that he sells to the White House and the Senate—I have sold that man a lot of fish, but right now, instead of him selling 5,000 to 10,000 pounds of rockfish a week, he sells 200 pounds a week. I have talked to him recently, and people do not want rockfish. The bad publicity has killed the market, there is no market for it.

Senator CHAFEE. The publicity about the taking of them, or is it something about PCB's or other things?

Mr. BALDERSON. The bad part was the handling of illegal rockfish. Our State has a virtual moratorium, and other States didn't have a moratorium, and they didn't know which States were going to have them. They will not freeze any. There aren't any frozen to sell because they are too afraid of losing them, of their being confiscated.

Senator CHAFEE. Well, gentlemen, thank you very much. Your testimony has been extremely helpful. We are particularly grateful to you and Mr. Haynie who got up at 3 o'clock.

Mr. BALDERSON. Yes, sir.

Senator CHAFEE. How far did you have to come?

Mr. BALDERSON. It is about 130 miles. You will have to come down that way sometime, Senator.

Senator CHAFEE. I would like to. Have a safe trip home, and we appreciate your coming.

Mr. BALDERSON. Thank you, Senator.

Senator CHAFEE. You, Mr. Brown and Mr. Russell, you had a long trip, too.

Now Mr. Alperin. Mr. Alperin, you have a statement, why don't you proceed.

STATEMENT OF IRWIN ALPERIN, EXECUTIVE DIRECTOR, ATLANTIC STATES MARINE FISHERIES COMMISSION

Mr. ALPERIN. I will try to keep this brief for you, but I feel that if I don't get into some detail, you won't get the answers you want.

Mr. Chairman, I am Irwin Alperin, and I am the executive director of the Atlantic States Marine Fisheries Commission. We appreciate the opportunity to appear before you on behalf of—actually we have 15 States in the Commission, but there are only 12 that are involved in the migratory striped bass plan. On their request, and I believe that you have received word of this, I am also appearing today on behalf of the International Association of Fish and Wildlife Agencies.

Your letter, Senator, of July 10, 1985, requested that I present information before the subcommittee on three areas—the evaluation of the interstate fisheries management plan by the Secretaries of Interior and Commerce, the recent activities of the Commission, the Commission's Striped Bass Board and its Scientific and Statistical Committee, and your draft bill to amend and extend the Atlantic Striped Bass Conservation Act. I will address these in order.

The evaluation of the interstate fisheries management plan for striped bass prepared by the Secretaries of Commerce and Interior, in response to section VII of Public Law 98-613, was received shortly after the last meeting of our Scientific and Statistical Committee in late April. Consequently, these technical people did not have an opportunity to review and comment, as a group, on the evaluation.

Several individual States are preparing comments on the evaluation which we will submit to the record of this hearing when we receive them. The Commission will also prepare an analysis and/or acknowledgment of the evaluation to send to the two Secretaries, and we will submit that to you when it is completed.

In preparation for our June meeting, that is the meeting that was mandated by the Striped Bass Act, to evaluate the State implementation of the striped bass plan, we did conduct a preliminary and nonexhaustive examination of the secretarial review, particularly of the section that provides recommendations for additional State actions.

As we reported to the two Secretaries, in our letter of July 1, 1985, we believe that the Secretarial review essentially concludes that if the commission continues its planned strategy for management, the plan, as amended, in conjunction with the Maryland moratorium, should be sufficient to restore the Maryland population of striped bass, and that portion of the coastal migratory stocks it supports.

Further, the Commission has now taken additional actions that correspond closely to the recommendations made by the secretarial review, which I will describe in greater detail in the next part of the statement.

A number of States made additional significant changes in their striped bass management regimes since the time period that the U.S. Fish and Wildlife Service and the National Marine Fisheries Service report and statements are based on.

Second, the Commission is proceeding to revise, update, rewrite its striped bass management plan under the supervision of the Striped Bass Management Board. Plan revision is our highest priority.

Senator CHAFEE. I get so confused over all of these groups. The commission is made up of the various States.

Mr. ALPERIN. It is an interstate compact approved by Congress.

Senator CHAFEE. It is an interstate compact in which each State has three representatives.

Mr. ALPERIN. Yes, three representatives.

Senator CHAFEE. In going through what you said, the plan that you came up with, which is the 55 percent——

Mr. ALPERIN. That was an amendment to an original plan that was first published in 1981. The 55 percent was added on in 1983.

Senator CHAFEE. In the first part of your statement, you say, "The evaluation of the interstate fisheries management plan for striped bass," and so forth, was received shortly after you met in April of this year. The evaluation of the 55-percent plan, is that what you are talking about?

Mr. ALPERIN. No, we are talking about the secretarial review, we have not responded to that formally.

Senator CHAFEE. But that was a review of the 55-percent plan; is that right?

Mr. ALPERIN. It included that, yes.

Senator CHAFEE. You say that you haven't had a chance to respond to their review.

Mr. ALPERIN. We looked at their recommendations at our meeting in June, and we concluded that we would try to meet them. One of the recommendations was rewriting the management plan, and we are doing that.

Senator CHAFEE. In other words, making it tougher.

Mr. ALPERIN. We are making it tougher.

Senator CHAFEE. Based on that, you went to amendment 3.

Mr. ALPERIN. Amendment 3 is one of the options that is recommended in the secretarial review, and we are trying to meet that. You would have to read the secretarial review, and attached to my statement is a copy of the amendments we are recommending. I think if you read that in conjunction with the recommendations of the Secretaries, you will see that they coincide.

Senator CHAFEE. All right, why don't you continue.

Mr. ALPERIN. Amendment 3 will place further restrictions on striped bass harvests as suggested in option 3 of the secretarial review, and will supplement the measures already in place through the initial 1981 plan and the two previous amendments.

Amendment 3 is designed to protect Chesapeake Bay stocks and ensure restoration of the Delaware system fish.

Also, the Commission's Law Enforcement Committee is prepared to fulfill the Commission's responsibilities under sections 4 (b) and (c) of the act in respect to monitoring enforcement of States 'activities in support of implementation of the plan, and the statutes and regulations that are affected.

The attached notice—it is attached to this statement—and instructions to State law enforcement personnel document the procedures that will be used. I have also attached a recent press release from the Commonwealth of Massachusetts that describes the type of enforcement actions that the States are undertaking.

The secretarial review observes that quality of habitat and environmental factors have a direct impact on the conservation of striped bass, and the States and the Federal Government should implement appropriate habitat protection measures.

The 1984 annual report of the emergency striped bass research study and the secretarial review, both emphasize the major and perhaps predominant role that environmental pollution and habitat degradation play in the current decline status of Chesapeake Bay striped bass.

Our revised plan for striped bass will devote considerable attention to the importance of the quality of the environment and habitat for striped bass.

In regard to proposals, such as the Westway project in New York City, the Commission will continue to serve as an advocate of wise planning decisions. We are opposed, and we are on record as opposed to the Westway project.

Moving on to your second request, recent Commission activities.

Since 1981, the 12 States that are parties to the interstate fisheries management plan for striped bass, have been working on a State-by-State basis to implement the recommendations of the plan. Attention in recent months has been primarily on implementation of amendment 2 to the plan, which recommends a 55-percent reduction in fishing effort in addition to what would have occurred through full implementation of the management measure in the original 1981 plan.

The Commission action to evaluate State implementation of the plan, as amended, was undertaken in several steps. First, the Commission asked its striped bass Scientific and Statistical Committee to evaluate striped bass management regimes in each coastal State for compliance with provisions of the interstate fisheries management plan.

The committee met to do this in late April of this year, and I will discuss next in greater detail, and found that 6 States in its estimation were not in adequate compliance. The Striped Bass Board then met twice in June, in conjunction with the full Commission at the last meeting on June 17 to 19, to evaluate State action and agree on a recommendation to the Secretaries based on the S&S Committee's report and State actions taken after the committee met.

These deliberations resulted in a determination, as reported to the Secretaries in a letter on July 1, that all States are in compliance with the plan. The apparent discrepancy between the conclusions of the S&S Committee and the Striped Bass Board's recommendations have understandably resulted in confusion, and I would like to address them.

Senator CHAFEE. Now we are getting to the point that Maryland goes all the way, and other States don't, yet somehow the whole thing works out all right.

Mr. ALPERIN. But Maryland only went all the way on January 1 because it couldn't meet the 55-percent regulation.

Senator CHAFEE. All right, go ahead.

Mr. ALPERIN. I would like you to understand that, and Delaware the same way.

Senator CHAFEE. Go ahead.

Mr. ALPERIN. The S&S Committee reported that the following States were not in adequate compliance with the plan: Virginia, New Jersey, New York, Connecticut, Massachusetts, and Maine. Unfortunately, the S&S Committee deliberations were so lengthy and involved, with a number of misunderstandings about common criteria and procedures for the evaluation, that different States were evaluated by standards which varied from State to State. The chair, that is Randy Fairbanks from Massachusetts, noted several inconsistencies in the committee actions that raised serious questions about the objectivity of the review process.

These inconsistencies and disagreements on several key criteria of the evaluation were then brought to the Striped Bass Board for resolution in early June, so that the board's consideration of the S&S Committee report and the State-by-State evaluation could be made on a more uniform and equal basis. The major points that were brought before the board are as follows:

One, given the general lack of data necessary to quantify reduction impacts of bag limits, that is limits on the number of fish taken per day, on recreational catch, should proposals incorporating bag limits be accepted?

Two, should proposals that rely largely on elimination of the bycatch allowance, that is the number of undersized striped bass that may be taken, to achieve reduction goals be accepted?

Three, should contaminant-related closures of fisheries be recognized as contributing to reduction goals?

Four, is the lack of coordinated seasons among some adjoining States grounds for rejecting proposals under the present guidelines?

The Striped Bass Board discussed these matters at length during its June 3 meeting and reached a consensus that bag limits and contaminant closures would count, that States claiming significant conservation measures by eliminating bycatch allowance should

present data justifying such a contribution, and that uncoordinated seasons would not be a proper reason to judge a State to be not in compliance.

With this common basis for evaluation, the board then proceeded on June 17 through 19 to examine State-by-State actions. Also during the months of May and June, a number of States that the S&S Committee had judged in noncompliance took additional significant action, and I will address only those States that the S&S Committee judged to be in noncompliance.

Senator CHAFEE. This will get pretty complicated.

Mr. ALPERIN. You can see that the States have taken significant actions that nobody here knows except me because they were not present at this meeting, including the watermen from Virginia.

Senator CHAFEE. Say that slowly again?

Mr. ALPERIN. I am saying that there were a number of actions that were taken since the evaluations were written for the Secretary and by the people in this room. They were not present at our board meeting, and they were not present at the review that the States gave to the board, and I would like to read them to you so that you will understand that they have made a number of changes which this board thought were significant.

Senator CHAFEE. All this will go into the record for me to absorb the intricacies of each State.

Mr. ALPERIN. I understand, it is a very complicated picture.

Senator CHAFEE. Why don't you go to the last point here.

Mr. ALPERIN. Let me state that Virginia, New Jersey, New York, Connecticut, Massachusetts, and Maine had all taken action which the board thought was significant. That is the point that I wanted to make.

Senator CHAFEE. I am going to ask you specifics about them in answers to the questions that have been posed by the previous witnesses, Mr. Balderson, Mr. Russell, and the others.

Mr. ALPERIN. We also reviewed the Potomac River Fisheries Commission, which is not included in the act, and we reviewed the fact that the District of Columbia, which has control over 10 or 14 miles of the Potomac River, has no regulations for striped bass, and we recommended that Congress should tell us what to do about that.

Senator CHAFEE. All right, now let's go to your last point. In summary, you say you hope you have cleared up the differences, and I will ask you those in specific questions. Let's go to the last point, the proposed amendments.

Mr. ALPERIN. May I include a statement that was presented to me by the International Association of Fish and Wildlife Agencies for contribution here. They are expressing their views, and I presume that they were asked to comment on Public Law 98-613.

Senator CHAFEE. No, we haven't finished this. Why don't you read out the proposed amendments that you are talking about now. I take it that it is amendment 3, or the draft bill? We have asked you for your comments on the draft bill.

Mr. ALPERIN. We have distributed the proposed amendments to Public Law 98-613 to our member States, but very few have had sufficient time to respond. They have only had it, I think, for about 10 working days. Responses to the proposals to date are mixed.

North Carolina does not object. Connecticut and New York feel that the act has served its purpose, and management of this issue should revert to the coastal States having jurisdiction over the nation's internal waters and territorial sea.

We will submit additional State comments for the record when we receive them.

I must also add that the Commission and its member States have increased research, monitoring, management, and enforcement activities to a great degree to meet the needs of the resource and the requirements of Public Law 98-613.

In our attached documents, we describe what the Law Enforcement Committee plans to do, and we indicate what the scope of these requirements will be. Federal agencies, we believe, have increased their workload to meet the needs of striped bass. At the same time, we are finding difficulties with funding these activities. Funding has remained level or has declined. Most of the research, monitoring, management, and enforcement is carried out by the States under programs for which the administration has requested no funding, such as section 4 and section 7 of your emergency striped bass study, and the Anadromous Fish Act.

We thank you for your past support of these important fisheries management activities, and we ask that you continue to act on their behalf. If the States don't receive anadromous fish money, or if the Chafee program is discontinued, we are going to have trouble meeting even those goals.

Senator CHAFEE. You don't get any money.

Mr. ALPERIN. Not me. The Commission and the States are one and the same. You see the Commission staff right here, three people. It is the States that make up the Commission. So we don't get any money at all to do anything under striped bass.

Senator CHAFEE. From the Chafee program——

Mr. ALPERIN. We will have this year $15,000 to conduct two striped bass workshops. We have conducted our striped bass workshops every year with money that is provided from the Chafee study.

Senator CHAFEE. You get some money out of that.

Mr. ALPERIN. Yes, it is about—We got previously $10,000, and we have $15,000 for this year.

Senator CHAFEE. I will put in the record, obviously, the statement from the Association of Fish and Wildlife Agencies.

Let me ask you a few questions, Mr. Alperin. You have heard the testimony here today, you have been here right along and have heard the testimony of Mr. Balderson, Mr. Russell, and the others, what do you say? It seems to me that they have a very legitimate gripe. The villains here appear to be the New York fishermen.

Mr. ALPERIN. I wouldn't agree to that.

Senator CHAFEE. I would like to read to you the landings by State.

Mr. ALPERIN. As a matter of fact, the Potomac River Fisheries and the Potomac River fishermen, who are not listed on this National Marine Fisheries landing, caught the most fish. They caught 750,000 pounds, and it was cut off on January 1. They would have continued fishing through this spring if it weren't for the fact that the Potomac River Fisheries Commission decided to get on the ball

with the rest of us, and they closed the fishery down. It will be closed until May 31.

The culprits in this thing are not always clear from the statements you hear. Maryland, before the moratorium, caught 940,000 pounds.

Senator CHAFEE. Maryland has a moratorium.

Mr. ALPERIN. Yes, but how about the——

Senator CHAFEE. Mr. Alperin, we are starting from where we are now. Maryland may have been a culprit; they have clearly taken drastic action.

Mr. ALPERIN. I understand.

Senator CHAFEE. So let's see who is doing what now.

Mr. ALPERIN. If you look at these figures——

Senator CHAFEE. Today is July 19, where do the various people stand? Who is wearing the white hats and who is wearing the black hats?

Mr. ALPERIN. In what respect? In terms of total landings, or in terms of regulations. All States now have a 24-inch size limit in coastal waters.

Senator CHAFEE. All right, let's address that.

I think Mr. Balderson, or maybe it was Mr. Russell, who said, sure they have it in coastal waters, but they don't have it in inland waters.

Mr. ALPERIN. They have 18 inches in inland waters, except in Maryland, which has 14. The Maryland laws are still on the books.

Senator CHAFEE. If Maryland has a moratorium, it doesn't make any difference if it is 10 inches. It could be lifted tomorrow by the legislature.

Mr. ALPERIN. It was not imposed by the legislature, sir. It was imposed by the Department of Natural Resources under their authority to declare it an endangered species, and the legislature is furious.

Senator CHAFEE. Well, they stuck it out through a session, didn't they?

Mr. ALPERIN. They did, one, but they are waiting to see what happens with the fish, and what has happened is that there is now a great supply of year class 1982 fish, and everybody in the world wants to fish for them. Maryland fishermen, sports fishermen and commercial fishermen alike, killed those fish last fall. The Potomac River Fisheries Commission, those people killed those fish last fall. The Virginia fishermen killed those fish last fall in great numbers. We don't know what is left.

We have before us the ad hoc reports that say there is a greater number of undersized, small fish in the Northeast and the mid-Atlantic States. The presumption is they are mostly 1982 year class of fish that are just getting old enough to migrate out of Chesapeake Bay. Most striped bass don't leave the bay before they are two-plus years old, and they are mostly females.

Senator CHAFEE. Look, Mr. Alperin, let's slow down here a minute. What I am interested in is how the present Atlantic States Marine Fisheries Commission's plan is working; and second, what we ought to do in the future. So the first question is to revolve around how the plan is presently working. Do some States permit substantial takings?

You said they all now have the 24-inch limit; is that right?

Mr. ALPERIN. In the coastal waters. The Commission's plan, if I can clarify, separates producing waters from coastal waters, that is waters where the striped bass are produced.

We had originally a 14-inch size limit recommended for the Hudson River, the Chesapeake Bay, and for the Albermarle Sound and Roanoke River fisheries because they were producing areas, they had lots of small fish. Their size limits usually were 11 to 12 inches, so we recommended 14, and that has now been raised to 18. That is in inland waters where the fish are produced, that means the spawning area fish, and that is different from a coastal fish.

Senator CHAFEE. OK.

Mr. ALPERIN. So we do have two generally accepted size categories, 14 but it has been raised by the States to 18 inches——

Senator CHAFEE. Have they all raised it to 18 inches?

Mr. ALPERIN. All, except, as I said, Maryland because it is statutory in Maryland, it is still on the books as 14 inches, and North Carolina, which will have a 16-inch fish.

Senator CHAFEE. In all fairness to Maryland, I don't think any State has made these changes. Most States don't make these changes by statute. In my State, the legislature doesn't decree.

Mr. ALPERIN. You have a Fisheries Commission.

Senator CHAFEE. We have a Fisheries Commission, and it is not the State legislature that determines the size whether it is 14 or 18 inches.

Mr. ALPERIN. It is in New York, and it is in New Jersey, and it is in Maine.

Senator CHAFEE. I suspect that Maine is an insignificant player in this game.

Mr. ALPERIN. I agree with you.

Senator CHAFEE. OK.

Mr. ALPERIN. You can put New Hampshire in that category, too, they have very few bass.

Senator CHAFEE. All right. Now let's deal with the States we have concern with. My question is, and I tend to agree with Mr. Balderson that it seems unfair that some States are making a major effort and others aren't, and I think you folks have been too easy.

Over their head is hanging this Federal moratorium, and there are many people, you have heard the witnesses——

Mr. ALPERIN. Senator Chafee, I won't argue with you, but I don't know what Mr. Balderson is about since the Potomac River fisheries caught 750,000 pounds of fish, and they will catch them again next year. They have a season from May 31 to December 1, and they catch most of their fish in the fall.

They are going to catch them in September, October, and November in very large quantities, in hundreds of thousands of pounds.

What he is complaining about is that if a fish escapes from the Potomac River and goes down to the Chesapeake and gets into the ocean, they don't want it caught in Massachusetts. Massachusetts says, hell, we have a right to those fish just the same as everybody else. We don't have any spawning rivers, but when they come up

here, we want to catch some. They would say the same thing in your State of Rhode Island.

I can't resolve that argument. Do you want to reserve the striped bass just for the Chesapeake Bay fishermen? We don't. The Commission as a whole, works by consensus. We have no regulatory authority. We don't even have a vote.

Senator CHAFEE. You do.

Mr. ALPERIN. We work by consensus.

Senator CHAFEE. I know, but it seems to me that when your scientific group reports back, you say that their information was shoddy.

Mr. ALPERIN. It was.

Senator CHAFEE. They report back that six States are not in compliance, they report that in May, and in June, you say that everything is fine, everybody is falling in line. I have trouble believing that that is so.

First of all, this business is a 55-percent reduction. Does anybody know what that means?

Mr. ALPERIN. The 55-percent reduction in effort was recommended by the Federal biologists in 1983 in conjunction with Maryland. Maryland said, we have to have it.

Senator CHAFEE. What you are saying is that it can be defined.

Mr. ALPERIN. They have a definition for it, but I am sorry, I can't give it to you.

Senator CHAFEE. It is something that is discernable.

Mr. ALPERIN. Right. What they said was, there was a number of ways that you can achieve this. You can achieve this by size limits, by season, by cutting down on the catch in the sports fishery by bag limits. States should choose their own method of reducing the landings. There was no restriction on what they chose to do. Some States didn't have a commercial fishery, so they weren't going to close down the netting season or stop fishing on the spawning grounds. They had to use other methods to do this, and they did it sometimes by cutting bag limits, and mostly by closing the season down in many cases.

Senator CHAFEE. Do you agree with the statement that was made earlier that although each individual State, as part of your commission, was not in compliance with the 55-percent reduction, that overall the compliance has been reached. Mr. Douglas, I believe, said that.

Mr. ALPERIN. Yes.

Senator CHAFEE. And Dr. Kutkuhn. Overall the compliance was reached because some States did more. Is that true?

Mr. ALPERIN. I believe that is true. I don't have any measure of that, but I was pleased to hear Mr. Douglas say that it is more than 55 percent, which was our goal.

Senator CHAFEE. If that is so, why shouldn't each State meet the required 55 percent?

Mr. ALPERIN. For example, if we take Massachusetts as an example, they cut their recreational fishery from two fish a day to one fish a day. That is a severe restriction, and that should reduce the recreational catch by 50 percent, logically, but they have no measurement of it. That is one of the difficulties. The sports fishing surveys of the National Marine Fishery Service doesn't give us any

figures for management. We don't know the numbers of fish, the pounds of fish, the size of fish, or the number of fishermen in these individual States. I will have to give them credit for it, Maryland is the only State on the Atlantic coast that has a saltwater fishing license, and that only applies to Chesapeake Bay. The Potomac River Fisheries Commission is considering a saltwater fishing license. The State of Florida is considering one. The States on the Atlantic coast have been very slow about restricting sports fishing and licensing fishermen, and I think that that has been a fault in the fisheries for the 35 years that I have been around.

Senator CHAFEE. Despite all that has taken place, the 55-percent reduction, now your group has decided that we are going to take another step.

Mr. ALPERIN. No, we are doing it because the Federal Government criticized us, and we think we have to go further. We are responding to the Secretaries' report.

Senator CHAFEE. Your response is amendment 3.

Mr. ALPERIN. Our response is amendment 3.

Senator CHAFEE. How is that coming?

Mr. ALPERIN. We just passed it on the 19th of June. I would think that it will take a considerable amount of time, just as the other amendments did, knowing that in some States it has to be done legislatively, and others where it has to be done by commissions and boards. The only State that I am aware of, where the regulatory authority rests with the director of Marine Fisheries, is Massachusetts. In every other case, it is legislative action, or it is done by a commission that is usually appointed by the Governor. It will take time. I have no assurance that they will all adopt it, but we hope they will.

Senator CHAFEE. If they don't all adopt it, then what happens?

Mr. ALPERIN. They will get preempted.

Senator CHAFEE. By the Federal moratorium?

Mr. ALPERIN. That is my position on it.

Senator CHAFEE. How long before the axe falls? How long have they got?

Mr. ALPERIN. They have until the act sunsets.

Senator CHAFEE. They don't really have to meet the amendment 3.

Mr. ALPERIN. We have no regulatory authority. We make recommendations. You must recognize one thing, the Commission members are not the people who necessarily do the regulating. All they can do is go back home and say, this is a regulation which we agree to on the Atlantic States Marine Fisheries Commission, and we would like to have it carried out. Just as an act is brought before Congress, they have to present the act before their legislature in New Jersey and New York, and other States that require that, or before their board.

It is very simple in a State that has no striped bass, such as New Hampshire, for them to pass a 28-inch size limit or do whatever they please.

Senator CHAFEE. If this is such a hopeless quagmire——

Mr. ALPERIN. I don't think so. I think we have come a tremendous way. I can't help but agree that the current act has forced the States to take action to prevent being preempted, there is no ques-

tion about that. The Governor of New Jersey accepted a 24-inch size limit, signed the bill, and the legislature took a whole year to get it passed. They had a tremendous fight in the New Jersey Legislature, but the Governor signed it on July 1.

Senator CHAFEE. Was that the deadline?

Mr. ALPERIN. We considered that that was acceptable. The director of the New Jersey Fish and Game said, "I expect to be preempted if the Governor doesn't sign this piece of legislation," but the Governor signed it.

Senator CHAFEE. You see, you are making a very good argument for the extension of the law.

Mr. ALPERIN. My personal view is that it wouldn't hurt anything.

Senator CHAFEE. It wouldn't hurt? It seems to me that you would get nothing done without it.

Mr. ALPERIN. I am not sure. Some States are going to respond as best they can.

Senator CHAFEE. Yes, New Hampshire and Maine will respond.

Mr. ALPERIN. What I am saying is, you have 12 individual States with different concepts of what is required of them and different ways of going about doing it. These are traditional State legislatures.

Senator CHAFEE. Sure, they have different ways of going about it, and it seems to me that some of them just thumb their nose at the whole business and have no intention of recognizing the problem.

It is wonderful for a State like any of the individual States to say, well, Maryland has done their part, Virginia has done their part, and we only take a little bit of the whole catch anyway, so we don't do anything.

Mr. ALPERIN. New Jersey reduced its bag limit by 50 percent.

Senator CHAFEE. Tell me what New York has done?

Mr. ALPERIN. I will read you what New York has done. Those are the statements that I have in here. All I can do is describe what they have done.

"New York's management regime now extends closed seasons and prohibits the sale of striped bass from January 1 to May 7."

Senator CHAFEE. Is that significant? I thought we had some testimony from Mr. Russell that that is just nothing.

Mr. ALPERIN. That is Mr. Russell's opinion. It is not the New York State Division of Marine Fisheries'.

Senator CHAFEE. I am asking you, Mr. Alperin.

Mr. ALPERIN. I think that it is significant that they have a closed season, and that they will not allow the sale of striped bass.

Senator CHAFEE. But Mr. Russell said that in an open season, that is when they get 7 percent of their total catch anyway.

Mr. ALPERIN. That accounts for 7 percent savings.

Senator CHAFEE. You are easily satisfied.

Mr. ALPERIN. You have to add these up.

It imposes a two-fish bag limit on the recreational fishery, with a minimum size of 24 inches in marine waters. Formerly there was no limit on the number of fish. I think that that is a significant reduction, don't you? To go from an open fishery where you could catch as many as you wanted to two a day, in management concepts, that is a significant reduction. I can't measure it, but we would hope that New York can measure it. If they don't have a

sports fishing survey, it is going to be difficult for them to convince anybody of what the size of the reduction is.

We listen to their argument—I don't listen to them, I don't have any jurisdiction to listen, I just sit there. I don't have a vote. I just listen to what they present.

Senator CHAFEE. Go ahead.

Mr. ALPERIN. Also, in the Hudson River, they impose a four-fish bag limit and an 18-inch minimum size on the recreational fishery, but the Hudson River has been closed to commercial fishing, I think since 1976, because of PCB contamination. Now, because of PCB contamination, they have extended the closure of commercial fisheries all around Long Island, Westchester County, Staten Island, lower New York Harbor, excluding the eastern end of Long Island, which Mr. Russell says are where all the fish are caught, but I disagree with him because he is only talking about the haul-seine fishery, and I am talking about the recreational fishery that catches striped bass by the hundreds of thousands and sells them in every State.

Senator CHAFEE. I don't think that you can give too much credit to New York if they are doing it because of the PCB.

Mr. ALPERIN. It also has frightened people. It is restoring the striped bass because people won't eat them, and they won't buy them.

Senator CHAFEE. I can't see that New York is doing anything to save the stripers. They are doing it because they don't want to poison their people.

Mr. ALPERIN. The Striped Bass Board of the Atlantic States Marine Fisheries Commission said that it would count it, and that is all I can report to you. I am just reporting facts, that is what they said. They think that this is a significant savings of fish.

Also advisories were put out in New Jersey not to eat striped bass because the fish that come from the Hudson River are contaminated, and the same went into effect in Connecticut, and I believe it is onboard in Rhode Island. People are advised not to eat striped bass that they catch, or the public health officers recommend that an adult male may have one portion of fish a week or something of that sort. I think that that is very restrictive, and it is going to destroy the market for striped bass.

Senator CHAFEE. Maybe we owe a debt of gratitude in a perverse way to PCB.

Mr. ALPERIN. I don't think that anybody wants to be poisoned by fish, and I think that it is very bad for the sale of fish in general. It is a fact that the striped bass in the Hudson River are contaminated with PCB.

Senator CHAFEE. OK, Mr. Alperin, a couple of questions and if you could give me brief answers.

On the legislation to extend the moratorium, are you for it or against it?

Mr. ALPERIN. The Commission has not taken a position. We will report to you as soon as we get a response. We sent out copies of your bill, but we have only heard from three States.

Senator CHAFEE. Complaint was made that your meetings are not open to the public. Is that true or false?

Mr. ALPERIN. There are executive sessions, but they are open to the public as far as I know.

Senator CHAFEE. If you don't know, who else would?

Mr. ALPERIN. Certainly, the two meetings that we had in June were open to the public. The public were there.

Senator CHAFEE. Did the press come?

Mr. ALPERIN. The press came, but not very often. They are not very interested. There were some press people.

Senator CHAFEE. They can come.

Mr. ALPERIN. They can come. We are an adjunct of State government, and these are public meetings, except when we go into executive session about finances.

Senator CHAFEE. The executive sessions aren't overdone that you know of?

Mr. ALPERIN. They rarely amount to much, less than a half a day of a 3½-day commission meeting.

Senator CHAFEE. What about the latest amendment, just briefly. What is going to happen under amendment 3?

Mr. ALPERIN. Let me see if I can remember the details of it.

Senator CHAFEE. I don't need too many details.

Mr. ALPERIN. One thing, it eliminates any allowable by catch below the minimum length. In the original plan, we allowed sport fishermen to take four fish under the proposed sized, and the commercial fisheries up to 5 percent below the size. Now, we have decided that all undersized fish would be eliminated.

Senator CHAFEE. Is that of significance?

Mr. ALPERIN. We think that it is significant. If you read those numbers that were presented by Mr. Douglas on recreational landings, and we have commercial landings, the total percentage would be significant numbers of fish. In some States, if the size limit was 24, but they were allowed to take fish between 16 and 24, they could take all their fish undersized.

I think the most important thing, let me read the first objective of the amendment. That is our recommendation. ASMFC makes recommendations to the States, we cannot force them. You can force them. You can do what you want.

Senator CHAFEE. The way you force them is through that moratorium hanging over their head.

Mr. ALPERIN. We have recommendation powers. We do not have regulatory powers. A Governor can leave the commission at any time just by informing the other Governors that he wants to leave.

Senator CHAFEE. That is right.

Mr. ALPERIN. I am afraid that that might happen over striped bass.

Senator CHAFEE. But, Mr. Alperin, isn't it true that what makes the States come around finally is the fact that that moratorium is there.

Mr. ALPERIN. I think that it has significance.

Senator CHAFEE. Significance, I think that it is tremendous——

Mr. ALPERIN. Mr. Cookingham has said in public hearings that if the Governor didn't sign the 24-inch size bill, he expected to be preempted, but the Governor did sign it.

Senator CHAFEE. He signed it because this thing is hanging over his head.

Mr. ALPERIN. He was resigned to being preempted if he couldn't do anything about it. He is not empowered to make the regulation, the legislature is.

Senator CHAFEE. Let's go on.

Mr. ALPERIN. This is the point. That the States reduce fishing mortality—this is our main objective—on the 1982 year class females and females of all subsequent year classes, not just the 1982 year class, of Chesapeake Bay stocks to zero until 95 percent of the females of these year classes have an opportunity to reproduce at least once.

All female striped bass have reproduced, according to examination of old data—we don't have any recent data—when they are about 6 years old. This objective is intended to apply to the fishery until the 3-year running average of Maryland young of the year index attains 8. Management measures which will achieve this objective include combinations of the following, which ensure that no fishing mortality occurs on the target year classes. The elimination of the bycatch was one. The closures of striped bass fisheries was another, and the minimum sizes——

Senator CHAFEE. I don't want to get into all of those details. Let me ask you this. How long before that amendment would take effect, what is the deadline?

Mr. ALPERIN. The effective date of this amendment is July 1, 1985, which means that the commission has adopted it on July 1, 1985, and I don't know—as I said before, I don't know how long it will take the States to accomplish it, and I am not at all sure that all States can.

I wasn't sure that all the States could achieve the 55-percent reduction when it was first proposed.

Senator CHAFEE. What do you think if the Federal Government just imposed a 1-year moratorium?

Mr. ALPERIN. It would just stop fishing, and I don't know that it would make any improvement in anything. How would it improve things, that is what I am curious about. How would the moratorium improve anything?

Senator CHAFEE. Well, there certainly wouldn't be any fish killed. It would give them a chance to spawn.

Mr. ALPERIN. But they are spawning now in great abundance. What is happening is that the eggs and larvae are dying in even greater abundance. A cow striped bass can produce 300,000 eggs, one single fish. There seem to be plenty of males around to fertilize the eggs. What happens is that instantly, or very soon after the eggs are spawned, the eggs rupture or the larvae that are hatched out die. It has been the case for the last 10 years. We had a reasonable year class in 1978, which is mostly fished out.

Senator CHAFEE. You are saying that it doesn't make any difference.

Mr. ALPERIN. I don't think that it makes any difference, that is my personal view. It doesn't make any difference '

Senator CHAFEE. If it doesn't make any difference, then I suppose that you were not even for the 55-percent reduction.

Mr. ALPERIN. No, I was for it because the commission was for it. I am their employee, and I do what they say. If they think that they need a 55-percent reduction, they certainly outnumber me. I

don't think that a single year moratorium—I don't know what it will change, really.

According to Maryland biologists, there were very good numbers of females on the spawning grounds this spring. Whether or not there will be a good year class, and we heard one report suggesting that it might be very poor, is what happens to the eggs and larvae.

You made the point that there may be some problems, and that the Fish and Wildlife Service and the National Marine Fisheries Service, under the Chafee emergency study, has perhaps not looked into the genetic situation and what happens to eggs and larvae, or that that is properly attended to. I don't know.

Senator CHAFEE. What do you think about gillnetting, is it a threat to the striped bass?

Mr. ALPERIN. Not particularly because gillnets can be regulated by size so that only the fish of the size that you want caught are caught.

Senator CHAFEE. If you have a gillnet that won't take a 24-inch striped bass, what will it catch?

Mr. ALPERIN. I can't answer that. I don't know what it catches. It depends on the season and where it is set, because the striped bass are not ubiquitous, and they are present in certain sizes and certain places at certain times of the year.

Commercial fishermen usually know what they are doing about that. I heard that gentleman say that he wasn't willing to take 200 pounds of spot if he had 1,800 pounds of striped bass, and he let go. He might do that, but I don't know that another fisherman wouldn't pick the spot out and let the striped bass go.

Senator CHAFEE. Thank you for coming, Mr. Alperin.

Mr. ALPERIN. If there is any other information that you need to know about the Commission, we will be pleased to supply it for the record.

Senator CHAFEE. Yes, Senator Lautenberg has some questions for the record that he will be submitting to you, I think, Mr. Alperin.

Mr. ALPERIN. OK, we will respond to that in writing or any method that we have to do it.

Senator CHAFEE. All right, thank you. Thank you all for coming.

[Whereupon, at 12:38 p.m., the subcommittee adjourned.]

[Statements supplied for the record and responses to written questions follow:]

TESTIMONY OF
JAMES E. DOUGLAS, JR.
ACTING DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

JULY 19, 1985

Mr. Chairman and Members of the Subcommittee:

My name is James Douglas. I am Acting Deputy Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), and I am pleased to present testimony on the management and conservation of Atlantic coast striped bass.

You have asked that I discuss the most recent results of the Emergency Striped Bass Research Study, the evaluation of the Interstate Fisheries Management Plan, summarize and evaluate recent activities by the Atlantic States Marine Fisheries Commission (ASMFC) and comment on extending the Atlantic Striped Bass Conservation Act.

The National Marine Fisheries Service (NMFS) has been intensively involved with striped bass management since 1977, when we began, in cooperation with the states, to develop a fishery

management plan for striped bass. In 1979, the Anadromous Fish Conservation Act (P.L. 96-118) was amended to include the Emergency Striped Bass Research Study. This legislation was in response to a decline in production and harvest of striped bass in the late 1970's. The objective of P.L. 96-118 was to examine the status of striped bass stocks, identify causes for decline in striped bass production, and perform an analysis of the economic impact of the decline in the harvest.

For the hearing record, I would be pleased to submit the 1984 Emergency Striped Bass Research Study Report. The findings of the Emergency Striped Bass Research Study indicates that juvenile abundance indices in recent years for the Chesapeake Bay and Roanoke River stocks are the lowest on record. While the Hudson River stock does not appear to be undergoing a similar decline, all the coastal populations have experienced some degree of overfishing. The declines in the juvenile indices and the decline in harvest have been related to excessive fishing mortality, adverse environmental factors (either man induced or natural), or a combination of these factors. Populations of striped bass reached unprecedented high levels in the 1960's and the early 1970's. This led to increasing commercial and recreational fishing pressure that continued even during the time that population declines were evident. The states were unable to act quickly enough to reduce the harvest pressure to be more in line with the available stocks. The declines in juvenile indices as a result of environmental factors was accelerated by continued high fishing pressure.

While the striped bass is the best known example, many other coastal anadromous species are also undergoing varying degrees of ecological stress. The impact of this stress on striped bass and their habitat and appropriate measures to regulate the harvest must be addressed. For example, evidence gathered during the spawning season in 1984 suggests that pH/aluminum toxicity may be an important cause of mortality of early life stages in the Nanticoke and Choptank rivers of the Chesapeake. In addition, laboratory studies indicated that other inorganic contaminants may also be contributing to larval mortality at the low pH encountered in these two rivers in 1984. These results imply that episodic depressions in pH may play a major role in determining year-class strengths in those spawning grounds characterized by low alkalinity. It is not presently known how widespread this problem is, or for what period of time it has existed. The NMFS and the Fish and Wildlife Service have contracted, using fiscal year 1985 funds under section 7 of the Anadromous Fish Conservation Act, for studies to further investigate the impacts of environmental stresses on the survival of eggs and larvae of striped bass.

The Atlantic Striped Bass Conservation Act (P.L. 98-613), was enacted in October 1984 to promote effective State management measures for the conservation of striped bass on the Atlantic Coast from Maine through North Carolina. The Act required that the ASMFC determine in June 1985 whether each State had enacted measures

necessary to implement the Interstate Management Plan (the Plan) for Striped Bass. One of the most significant features of the Plan provided that States effect a 55 percent reduction in the fishing mortality rate on the Chesapeake stock, in addition to what would have occurred through full implementation of the original management measures proposed in the Plan adopted in 1981. This feature of the Plan is very difficult to measure statistically and thus has been one of the most serious issues faced by the ASMFC.

The NMFS and the U.S. Fish and Wildlife Service conducted an evaluation of the Interstate Fisheries Management Plan for Striped Bass as required by section 8 of the Atlantic Striped Bass Conservation Act. The effectiveness of the Plan was evaluated with the assumption that the reduction in fishing mortality from implementation of the Plan would yield at least a two-fold increase in the Maryland juvenile index by the end of five years. The existing plan, including the 55 percent reduction in fishing mortality rate, would increase recruitment but would not be adequate to meet this criterion. Our evaluation set forth four options which met the criterion.

These options were: (1) the provision of the Plan in Maryland and a moratorium in coastal waters; (2) a moratorium in Maryland with the provisions of the Plan in coastal waters; (3) a moratorium in Maryland with the Plan provisions plus a 28-inch minimum

size in coastal waters; and, (4) a total coastwide moratorium. The ASMFC subsequently adopted Amendment No. 3 which parallels option 3, thus the Plan is sufficient to restore the Chesapeake population of striped bass.

The ASMFC, in the past several months, has taken steps to determine whether each coastal state is in compliance with the Plan. The Scientific and Statistical Committee of the Striped Bass Management Board was charged with an initial determination in April. That Committee noted that the following States were not then in compliance: Maine, Massachusetts, Connecticut, New York, New Jersey, and Virginia. The remaining States, Rhode Island, New Hampshire, Delaware, Maryland, the Potomac River Fisheries Commission, and North Carolina were found to be in compliance with the Plan. The Management Board met in June and determined that at that time all States were in compliance with the Plan. In making that finding, the Management Board took into account a clarification of evaluation criteria, as well as actions either undertaken or proposed by States subsequent to the Scientific and Statistical Committee meeting. Three of the States (Rhode Island, New Jersey, and North Carolina) received conditional approval pending implementation of proposed new regulations. The full Commission concurred with the findings of the Board, and so reported to the Secretary of Commerce on July 1, 1985. I would be pleased to submit a copy of the report by the Management Board and the letter from the Commission to the Secretary for the record.

All of the States (Maine through North Carolina) have implemented various management measures to comply with the amended Plan provisions or agreed to implement them in the near future. When viewed in the aggregate, the States have implemented the Plan provisions plus the 55 percent reduction in fishing mortality rate on the Chesapeake stocks. In fact, we have estimated that over a 55 percent reduction occurred. Each of the States approached the reduction in different ways. Maryland and Delaware now have moratoria. A major part of the contribution to the aggregate reduction results from Maryland's moratorium. Virginia and the Potomac River Fisheries Commission, who share striped bass custodianship with Maryland in the Bay area, have adopted strict measures which also make a major contribution to the reduction. All of the other coastal States have adopted various management measures to protect the Chesapeake stocks after they leave Chesapeake Bay. These measures are critical to the recovery of the Chesapeake stocks. If these States continue to afford adequate protection for the Chesapeake stocks and all of the States comply with Amendment No. 3 to the Plan, the likelihood of recovery of the Chesapeake stocks will be greatly enhanced.

Amendment No. 3 to the plan approved by ASMFC in June 1985 is intended to protect the females from the 1982 year class and all females of subsequent year classes of the Chesapeake stock by

requiring the States to reduce fishing mortality to zero until 95 percent of the females of these year classes have had the opportunity to reproduce at least once. This amendment will require establishment of increasing minimum size limits through 1988. These size limits would be significantly greater than the current provisions of the Plan, which requires a 24-inch total length minimum size in ocean waters and a 14-inch total length minimum size in inland waters.

I believe each of the coastal States has seriously addressed the problem of minimizing fishing mortality on this troubled resource and all have taken actions to reverse the downward trend in stock abundance. We are concerned that they maintain these management efforts and monitor the effectiveness of these measures until recovery of the Chesapeake stocks has occurred. As the stock rebuilds, and an increasing number of small immature striped bass becomes evident, there will be a natural tendency to assume that the harvest can be increased. NMFS supports continuation of strict State management measures until the stocks are sufficiently rebuilt. Even then, continued management will be required to prevent a repeat of events which led to the decline we have experienced in the past.

This concludes my testimony, Mr. Chairman. I would be pleased to respond to any questions.

STATEMENT OF DR. JOSEPH KUTKUHN, ASSOCIATE DIRECTOR, FISHERY RESOURCES, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE, ENVIRONMENTAL POLLUTION SUBCOMMITTEE ON P.L. 98-613, THE ATLANTIC STRIPED BASS CONSERVATION ACT.

JULY 19, 1985

Mr. Chairman, I appreciate this opportunity to discuss the implications of recent developments affecting management of the Atlantic striped bass resource.

Your letter of invitation, dated July 10, asked that we address (1) the most recent results of the Emergency Striped Bass Research Study undertaken pursuant to Section 7 of the Anadromous Fish Conservation Act; (2) the evaluation of the Interstate Fishery Management Plan for Striped Bass (Plan) conducted pursuant to Section 8 of the Atlantic Striped Bass Conservation Act; (3) recent activities by the Atlantic States Marine Fisheries Commission (Commission), its Striped Bass Management Board, and its Scientific and Statistical Committee; and (4) a draft bill to amend and extend the Atlantic Striped Bass Conservation Act, P.L. 98-613 (Act).

In regard to the draft bill extending authorization of appropriations and requiring the Commission to determine Plan compliance by the States in June 1986, we have not yet developed a position on it.

I will now address your other concerns.

As you know, coastal migratory stocks of striped bass have undergone a rapid decline, some would even say collapse, over the last decade. Of particular concern are the Chesapeake Bay stocks that produce so many of the striped bass that

migrate north to New England each summer and fall, and the Delaware River stock that has already been lost. By early 1984, catches, and presumably population levels, were only 10 percent of what they were in the mid-1970s. There is no debate over the resource being at its historic low.

Last September, 1984, the Director of the Service appeared before this subcommittee and testified on several bills that addressed remedies for the precipitous decline in striped bass populations of the Atlantic Coast.

The Congress later passed the Atlantic Striped Bass Conservation Act that authorized the Secretary of Commerce, on recommendations from the Commission in June 1985, to impose a Federal moratorium on the take of migratory striped bass in those States that had failed to adopt and enforce regulations consistent with the Commission's (1981) Plan for coordinated management of the coastal striped bass fishery.

The Act also reauthorized the interagency Emergency Striped Bass Study through Fiscal Year 1986. The Study's most recent report, submitted to Congress on May 1, concluded:

- that indices of resource condition derived from measures of catch rate and juvenile abundance are the lowest on record for the Chesapeake and Roanoke stocks;
- that pH/aluminum toxicity may be severely inhibiting survival of young life stages produced in the Bay's Nanticoke and Choptank Rivers (MD);

- that no evidence supports or refutes high fishing mortality or great environmental stress as causing the downward trend in juvenile abundance;
- that stresses inducing early-life mortality remain ill-defined;
- that reducing fishing mortality through a coastwide moratorium would have an immediate and positive effect on egg deposition by the Chesapeake (MD) stocks;
- that continuing degradation of spawning habitat must be halted if restoration of the resource is to be eventually realized; and
- that better and more comprehensive intelligence about the status and performance of migratory striped bass stocks throughout their range remains an essential need for proper management.

In addition, the Act required the Secretaries of Commerce and the Interior to review the Plan, as being applied state by state, and report to the Congress on its potential for achieving the purposes of the Act. The joint report, transmitted on May 7, concluded that the Plan then in effect (early 1985) was deficient in several respects. The report also noted, however, that the Plan and compliance with it would be adequate if the Commission were to adopt an amendment pending at that time.

On June 19, 1985, the Commission adopted a somewhat different amendment (to be effective July 1, 1985) to the Plan, which, in the Services' estimation, promises substantial conservation benefit. We deduce that the changes this amendment calls for will require States to increase gradually the Plan's minimum-length provision from the 24 inches

specified earlier, to as much as 36 inches by April 1988. This move should have the desired effect of maximizing protection of the Chesapeake stock's relatively strong 1982 year class, as well as of all year classes succeeding it.

This latest added protection for the Atlantic striped bass will certainly and substantially improve the prospects for rehabilitating its stocks. The Services have not had ample opportunity to determine the full extent of this improvement, however, and continue to study the collective effect of all amendments and related compliance actions.

Since the Act was enacted on October 31, 1984, a great many positive actions have been taken, I am pleased to report. As already indicated, a joint DOI and DOC evaluation of the Interstate Striped Bass Fishery Management Plan, developed and amended earlier by the Commission, was prepared and submitted to the Congress this May in conformance with the Act.

Moreover, Commission has since examined State efforts to further protect the Atlantic coast striped bass in ways consistent with the Plan. As you know, a number of States strengthened relevant fishery regulations after passage of the Act. In particular, the States of Maryland and Delaware demonstrated notable leadership by applying moratoria on the take of striped bass in their waters. They deserve recognition for this bold step and the political fortitude it required; we applaud their actions. In deliberations last month, the Commission determined that all States are now in compliance with the approved Plan.

From its independent technical analysis of the Commission's recent determination the Service has tentatively concluded that the States as a group have taken a very significant step toward rehabilitating the Atlantic striped bass resource. All are to be commended for what, in most instances, required difficult decisions. Upon considering regulations that were actually in force on June 1, 1985, however, the Service believes that only Delaware, Maryland, the Potomac River Commission, and North Carolina are demonstrably in compliance with the Plan. Regulations by Virginia and New Hampshire to take effect after June 1, will, in our view, bring these States into compliance as well. Two other States, Massachusetts and Rhode Island, have also taken positive steps by imposing additional controls on their commercial fisheries for striped bass. Lack of information about the basis on which they made Plan related changes in the regulation of corresponding recreational fisheries precluded our projecting for each of these two States the total effect of all their latest actions.

The States of Maine, Connecticut, and New Jersey do not allow commercial fishing for striped bass. This prohibition aids implementation of the Act, but companion regulations on recreational take, we believe, remain inadequate for purposes of contributing to the 55% reduction in striped bass fishing mortality called for in the Plan.

Although New York does meet the minimum-length requirement of the Plan, it has yet to institute the degree of control over its commercial fishery that we feel is necessary for full compliance with provisions of the Plan.

We want to assure you that the Fish and Wildlife Service will sustain its active participation with the States, the Commission, and the National Marine Fisheries Service, in being responsive to the Subcommittee's interest in restoring this valuable food-and sport-fish to levels of previous abundance.

Mr. Chairman, this concludes my formal testimony. I would be pleased to answer any questions the Subcommittee may have.

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STATEMENT

OF

IRWIN M. ALPERIN
EXECUTIVE DIRECTOR
ATLANTIC STATES MARINE FISHERIES COMMISSION
(ALSO ON BEHALF OF THE
INTERNATIONAL ASSOCIATION OF FISH & WILDLIFE AGENCIES)

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OVERSIGHT HEARING ON P.L. 98-613
ATLANTIC STRIPED BASS CONSERVATION ACT
AND PROPOSED AMENDMENTS

JULY 19, 1985

Mr. Chairman, I am Irwin M. Alperin, Executive Director of the Atlantic States Marine Fisheries Commission. I appreciate the opportunity to appear before your Committee today on behalf of our 15 Atlantic Coast member States. On their request, I am also appearing today on behalf of the International Association of Fish and Wildlife Agencies.

Mr. Chairman, your letter of July 10, 1985 requested that I present information before your Subcommittee today on the following 3 areas:

1. the evaluation of the interstate fisheries management plan for striped bass conducted by the Departments of Interior and Commerce pursuant to Section 8 of the Atlantic Striped Bass Conservation Act;

2. recent activities by the Commission, the Commission Striped Bass Board and its Striped Bass Scientific and Statistical Committee; and

3. the draft bill to amend and extend the Atlantic Striped Bass Conservation Act.

I will address each of these items in order.

Departmental Evaluation of the Interstate Fisheries Management Plan for the Striped Bass

The evaluation of the Interstate Fisheries Management Plan for the Striped Bass, prepared by the Secretary of Commerce and the Secretary of the Interior in response to Section 8 of P.L. 98-613, was received shortly after our Scientific and Statistical Committee last met in late April of this year. Consequently, our technical experts have not had an opportunity to review and comment as a group on the evaluation.

Several individual States are preparing comments on the evaluation which we will submit to the record of this hearing when we receive them. The Commission will also prepare an analysis and/or acknowledgement of the evaluation to send to the 2 Secretaries, and we will submit that to you when it is completed.

In preparation for our June meeting to evaluate State implementation of the striped bass plan, we did conduct a preliminary and non-exhaustive examination of the Secretarial Review, particularly of the section that provides "Recommendations for Additional State Actions". As we reported to the two Secretaries in our letter of July 1, 1985, we believe that the Secretarial Review essentially concludes that if the Commission continues our planned strategy for management, the Plan as amended (in conjunction with the Maryland moratorium) should be sufficient to restore the Maryland population of striped bass and that portion of the coastal migratory stock it supports (attachment 1).

Further, the Commission has now taken additional actions that correspond closely to the Recommendations made by the Secretarial Review. First, as I will describe in greater detail in the next part of this statement, a number of States made additional significant changes in their striped bass management regimes since the time period the U.S. Fish and Wildlife/National Marine Fisheries Service report and statements are based on. Second, the Commission is proceeding to revise, update and rewrite its Striped Bass Management Plan under the supervision of the Striped Bass Management Board. Plan revision has our highest priority. Third, the Commission adopted Amendment #3 to the Striped Bass Plan (attachment 2). Amendment 3 will place further restrictions on striped bass harvest as suggested as Option 3 in the Secretarial Review and will supplement the measures already in place through the initial 1981 Plan and two previous amendments. Amendment 3 is designed to protect Chesapeake

Bay stocks and insure restoration of the Delaware system fish.

Also, the Commission's Law Enforcement Committee has prepared to fulfill the Commission's responsibilities under Section 4(b) and (c) of the Act in respect to monitoring enforcement of States' activities in support of implementation of the Plan, and the statutes and regulations affected. The attached notice and instructions to State law enforcement personnel documents the procedures that will be used (attachment 3). I have also attached a recent press release from the Commonwealth of Massachusetts that describes the type of enforcement actions that the States are undertaking (attachment 4).

The Secretarial Review observes that ..."quality of habitat and environmental factors have a direct impact on the conservation of striped bass, and the States and the federal government should implement appropriate habitat protection measures." The 1984 Annual Report of the Emergency Striped Bass Research Study and the Secretarial Review both emphasize the major, and perhaps predominant, role that environmental pollution and habitat degradation play in the current declined status of the Chesapeake striped bass stocks.

Our revised plan for striped bass will devote considerable attention to the importance of the quality of the environment and habitat for striped bass. In regard to proposals such as the "Westway Project" in New York City, the Commission will continue to serve as an advocate of wise planning decisions.

Recent Commission Activities Relating to Striped Bass Conservation and Management

Since 1981, the 12 States that are parties to the Interstate Fishery Management Plan for Striped Bass have been working on a State-by-State basis to implement the recommendations of the Plan. Attention in recent months has been primarily on implementation of Amendment 2 to the Plan, which recommends a 55% reduction in fishing effort in addition to what would have occurred through full implementation of the management measures in the original 1981 plan.

The Commission action to evaluate State implementation of the Plan as amended was undertaken in several steps. First, the Commission asked its Striped Bass Scientific and Statistical Committee (S&S Committee) to evaluate striped bass management regimes in each coastal State for compliance with provisions of the Interstate Fishery Management Plan.

The Committee met to do this in late April of this year, and, as I will discuss next in greater detail, found that 6 States in its estimation were not in adequate compliance. The Striped Bass Board then met twice in June (in conjunction with the full Commission at the last meeting on June 17-19) to evaluate State actions and agree on a recommendation to the Secretaries based on the S and S Committee's report and State actions taken after the SSC met. These deliberations resulted in a determination, as reported to the Secretaries in a letter on July 1 (attachment 1), that all States are in compliance with the Plan.

The apparent discrepancy between the conclusions of the S and S Committee and the Striped Bass Board's recommendations to the Secretary have understandably resulted in confusion, and I would like to address that now.

The S&S Committee reported that the following States were not in adequate compliance with the Plan: Virginia, New Jersey, New York, Connecticut, Massachusetts, and Maine. Unfortunately, the S&S Committee deliberations were so lengthy and involved, with a number of misunderstandings about common criteria and procedures for the evaluation, that different States were evaluated by standards which varied from State to State. The chair noted several inconsistencies in Committee actions that raised serious questions about the objectivity of the review process.

These inconsistencies and disagreements on several key criteria of the evaluation were then brought to the Striped Bass Board for resolution in early June, so that the Board's consideration of the S&S Committee's report and the State-by-State evaluation could be made on a more uniform and equal basis. The major points that were brought before the Board are as follows:

1. Given the general lack of data necessary to quantify reduction impacts of bag limits (limits on number of fish taken per day) on recreational catch, should proposals incorporating bag limits be accepted?

2. Should proposals that rely largely on elimination of the bycatch allowance (number of undersized striped bass that may be taken) to achieve reduction goals be accepted?

3. Should contaminant-related closures of fisheries be recognized as contributing to reduction goals?

4. Is the lack of coordinated seasons among some adjoining states grounds for rejecting proposals under present guidelines?

The Striped Bass Board discussed these matters at length during its June 3 meeting and reached a consensus that bag limits and contaminant closures would count, that States claiming significant conservation measures by eliminating bycatch allowance should present data justifying such a contribution, and that uncoordinated seasons would not be a proper reason to judge a State to be not in compliance.

With this common basis for evaluation, the Board then proceeded on June 17-19 to examine State-by-State actions. Also, during the months of May and June a number of States that the S&S Committee had judged in noncompliance, took additional significant actions. I will address only those States that the S&S Committee judged to be in noncompliance in May:

Virginia: On June 11, Virginia passed emergency regulations controlling the catch of striped bass which closed all State waters to taking striped bass from December 1 - May 31. This completely protects the stocks during the period in which the striped bass spawn in Virginia and pass through Virginia waters to Maryland spawning areas. It is illegal to possess, transport, process, sell, or offer for sale, striped bass during the same time period. Virginia also raised the minimum size in Chesapeake Bay from 14" to 18", and has a 24" coastal minimum size with no allowable bycatch. The Board voted unanimously to accept Virginia's regime, with two Federal members abstaining.

New Jersey: On July 1, legislation became effective that established a 24" minimum size limit, a 5 fish per day creel limit, and a prohibition on sale of fish smaller than 24". New Jersey allows the taking of striped bass

by angling only. New Jersey also has a widely publicized strong health advisory (because of PCB contamination) against consumption of striped bass caught in an area that comprises over 90% of New Jersey's fishery. This advisory has had an obvious impact on the market for striped bass in New Jersey. The Board judged that eliminating the previous bycatch of small fish, and halving the possession limit, was significant and voted unanimously to accept the New Jersey position with two Federal members abstaining.

New York: New York's management regime now extends closed seasons and prohibits the sale of striped bass from January 1 to May 7; imposes a 2 fish per day bag limit in the recreational fishery, with a minimum size of 24" in marine waters (formerly there was not limit on the number of fish); and imposes a 4 fish bag limit and an 18" minimum size on the recreational fishery in the Hudson River. New York has a rigorous enforcement program. New York has also closed all waters around 2/3 of Long Island to commercial fishing for striped bass because of PCB contamination (the Hudson River has been closed to commercial fishing since 1976); requires individual fish to be certified and tagged before sale; and has a strong health advisory about consumption of striped bass. This provides greater margins of protection for the resource in New York. The Striped Bass Board accepted this by unanimous vote, with the two Federal members abstaining.

Connecticut: In August, 1984 Connecticut implemented regulations that eliminated allowable bycatch of undersized fish, and closed the fishery from December 15 through April 15. (Striped bass is a gamefish in Connecticut when caught in Connecticut and cannot be sold.) The S and S Committee rejected Connecticut's proposal because the S and S Committee did not give credit for eliminating the allowable bycatch of undersized fish.

Under the Board's criteria giving credit for eliminating such bycatch, Connecticut's proposal was approved unanimously with two Federal abstentions. Connecticut also now has a statewide health advisory recommending that fishermen not eat striped bass from Long Island Sound. The impact of health advisories cannot easily be quantified but it is a reasonable assumption that strong health advisories will reduce fishing pressure.

Massachusetts: Massachusetts now allows hook and line fishing only, with a recreational limit of one fish per person per day; a 24" minimum size; prohibits the sale of recreationally caught fish; and has a closed season from October 1 - May 31. The Massachusetts proposal was approved by the S&S Committee in 1984 but the Committee rejected an identical proposal in 1985 on grounds that 1) data were not available to evaluate the impact of the one fish per day bag limit and 2) the Massachusetts closed season was not consistent with seasons in Rhode Island and New Hampshire. Under its uniform guidelines, in June the Striped Bass Board approved the Massachusetts proposal by unanimous vote, with the two Federal members abstaining.

Maine: In June, Maine passed legislation to establish a minimum size limit of 24". This legislation will come into effect in September after a 90-day statutory public notice period. Maine also now has in effect a 4 fish per day limit, and a prohibition of the sale of in-state landings. There is very little data on Maine landings. The S&S Committee rejected the Maine closure on grounds that no data is available to evaluate the impact of the bag limit on fishing mortality rate. The Striped Bass Board judged that this package of restrictions will essentially eliminate most of the Maine fishery and unanimously approved the proposal, with two Federal abstentions.

Although the Potomac River Fisheries Commission and the District of Columbia are not included under P.L. 98-613, the Commission examined their management regimes for striped bass at the June meeting. The Potomac River Fisheries Commission, in an emergency meeting on June 17, instituted regulations that mirror the current Virginia regulations. The Board approved this action by unanimous vote. The two Federal representative abstained. The District of Columbia currently does not regulate the taking of striped bass. At its June meeting, the Commission voted to encourage the District to institute management measures that complement adjacent State actions.

In summary, Mr. Chairman, I hope that I have cleared up the differences between the recommendations of the S&S Committee and the findings of the Striped Bass Board. The S and S Committee is empowered to recommend management measures to the Striped Bass Board and it is a central valuable part of our management process. The Board's findings in June, however, are based on uniform, agreed upon criteria and recent information. We believe that the Board's findings, as confirmed by the full Commission, are fully consistent with the Atlantic Striped Bass Conservation Act and the necessity to conserve and manage this important species.

Proposed Amendments to Atlantic Striped Bass Conservation Act

We have distributed the proposed amendments to P.L. 98-613 to our member States but very few have had sufficient time to respond. Responses to the proposal to date are mixed. North Carolina does not object. Connecticut and New York feel that the Act has served its purpose, and management of this issue should revert to the coastal states having jurisdiction over the Nation's internal waters and territorial sea. We will submit additional State comments for the record when we receive them.
I must also add that the Commission and its member States have increased research, monitoring, management, and enforcement activities to a great degree to meet the needs of the resource and the requirements of P.L. 98-613. The attached document (attachment 3)that describes our Law Enforcement Committee's plans to enforce P.L. 98-613 indicates the scope of required activities. The Federal agencies have also increased their workload to meet the needs of striped bass.

At the same time, available funding for these activities has remained level or has declined. Most of the research, monitoring, management and enforcement are carried out by the States under programs for which the Administration has requested no funding, such as Section 4 and Section 7 (Chafee Emergency Striped Bass Study) of the Anadromous Fish Conservation Act. We thank you for your past support of these important fishery management activities, and ask that you continue to act on their behalf.

The International Association of Fish and Wildlife Agencies has asked me to express its views on the reauthorization of P.L. 98-613.

Views of the International Association of Fish and Wildlife Agencies on Proposed Amendments to the Atlantic Striped Bass Conservation Act

It is the long standing policy of the International Association that fish and wildlife resources occurring within the boundaries of, and in the Territorial Seas adjacent to, individual states are held in trust by the states for the enjoyment, appreciation, economic and scientific benefit of present and future generations. Management agencies must strive to improve the quality and quantity of fish and wildlife resources and their habitats and ensure, at the very least, that these resources are passed on to succeeding generations in a viable condition. In addition, management must establish as a high priority the development and/or maintenance of adequate numbers to ensure the aforementioned benefits and optimal numbers of high interest species.

Fishery management consists of a continuum of activities including research, data collection, stock assessment, habitat conservation, fishery regulation and law enforcement. Traditionally, the states and the federal fishery services have cooperatively and jointly implemented such programs for shared marine and estuarine fishery resources. In state waters, fisheries are regulated by the states, with federal participation in law enforcement and habitat conservation as well as technical and financial support. In like fashion, fisheries in the EXCLUSIVE ECONOMIC ZONE are regulated by the federal government, and states provide substantial technical support and assistance in law enforcement, data collection, and habitat conservation. The International Association strongly advocates the maintenance and continued enhancement of these relationships.

There has been substantial state and federal progress in management of shared marine and estuarine fishery resources over the past fifteen (15) years. This progress has manifested itself in many ways including: cooperative enforcement agreements between NMFS and states and cooperative investigations on specific enforcement problems; active state participation in federal FISHERY MANAGEMENT COUNCIL functions; numerous formal and ad hoc cooperative state-federal fishery data collection projects; establishment of federally-assisted fishery management programs such as ASMFC's Interstate Fisheries Management Program. State marine fishery managers and the federal services are continuing to work to strengthen the partnership, the quality of our progams, and the benefits of improved management to marine fisheries. The International Association is concerned that federal regulation of fisheries in state waters, such as that provided for in the ATLANTIC STRIPED BASS CONSERVATION ACT, will disrupt the progress in cooperative implementation of all aspects of fishery management, and cannot be effectively enforced by the federal government. Therefore, the International Association cannot support reauthorization of the ATLANTIC STRIPED BASS CONSERVATION ACT.

Thank you for the opportunity to address these complicated issues. If you have any questions, I will answer them now or provide additional information for the record at your request.

ATTACHMENT 1

Atlantic States Marine Fisheries Commission
1717 Massachusetts Avenue, NW
Washington, D.C. 20036

July 1, 1985

CHAIRMAN
RALPH W ABELE
PENNSYLVANIA FISH COMMISSION
P O BOX 1673
HARRISBURG PA 17105-1673

VICE CHAIRMAN
ELTON J GISSENDANNER
DEPARTMENT OF NATURAL RESOURCES
3900 COMMONWEALTH BLVD
TALLAHASSEE FL 32303

MEMBER STATES
CONNECTICUT
DELAWARE
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GEORGIA
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NEW HAMPSHIRE
NEW JERSEY
NEW YORK
NORTH CAROLINA
PENNSYLVANIA
RHODE ISLAND
SOUTH CAROLINA
VIRGINIA

EXECUTIVE DIRECTOR
IRWIN M ALPERIN
(202) 387 9330

The Honorable Malcolm Baldrige (Identical letter to Secretary Hodel)
Secretary of Commerce
Washington, D.C. 20230

Dear Mr. Secretary:

The purpose of this letter is to inform you of recent activities of the Atlantic States Marine Fisheries Commission (ASMFC) in regard to the management of migratory stocks of striped bass along the Atlantic Coast, and the Commission's obligations under provisions of P.L.98-613, the "Atlantic Striped Bass Conservation Act" (hereafter referred to as the Act).

Section 4(a) of the Act declares that the Commission shall decide during June 1985 whether each coastal State has adopted all regulatory measures necessary to fully implement the Commission's 1981 "Interstate Fisheries Management Plan for the Striped Bass" and subsequent amendments to the Plan related to fishing. The Commission shall then immediately notify you and the Secretary of the Interior which State or States, if any, are not in compliance with the Plan as amended. Section 3(4) of the Act defines the term "coastal State" to include Pennsylvania and each State bordering on the Atlantic Ocean north of the State of North Carolina.

A number of our East Coast member States took substantial actions this spring and summer to comply with Commission recommendations to meet Striped Bass Plan amendments, and to lend further support to moratoria on fishing for this species in Maryland and Delaware. Maine, New Hampshire, Rhode Island, New Jersey, Virginia, North Carolina, and the Potomac River Fisheries Commission (not an ASMFC member) all recently enacted additional restrictions on the taking of striped bass in waters under their jurisdiction.

The Atlantic States Marine Fisheries Commission held several meetings in June of this year to fulfill its obligations to review and report on State actions. On June 17, 1985 during a spring meeting of the full Commission, the Striped Bass Management Board of the Commission's Interstate Fisheries Management Program (ISFMP) examined the regulatory measures of each of the States in the migratory range of the striped bass, and also those of the Potomac River Fisheries Commission

and the District of Columbia. Their deliberations resulted in a report (see enclosure) to the full Commission on June 19th that all 12 States and the Potomac River Fisheries Commission have adopted or, in the case of three states, will shortly adopt all regulatory and statutory measures necessary to fully implement the Commission's Striped Bass Management Plan. The District of Columbia, while not subject to the Atlantic Striped Bass Conservation Act, was brought into the Commission's discussions because of the District's prominence as a marketplace for this species, and because its Potomac River waters are inhabited by considerable numbers of striped bass. At the present time, the District has no size limit or management program for striped bass. Therefore, guidance from the Departments of Commerce and Interior as well as the Congress on how the District could institute conservation measures that complement adjacent State actions would be useful.

The three States that received conditional approval were North Carolina, New Jersey and Rhode Island. The Commission determined that approval of these states' compliance with the Plan was conditioned upon their final implementation of new statutes and/or regulations by July 1, 1985 or shortly thereafter. Rhode Island's regulations are due to be effective July 15, 1985, New Jersey's statutes went into effect June 28, 1985, and North Carolina presently has a Commission approved management strategy that will be in effect August 1, 1985.

Section 8 of the Act called for a Secretarial review of the Commission's Plan and a report to the Commission and appropriate Congressional Committees. That report was prepared and signed by you on May 10, 1985, and the Commission was in receipt of a copy in time for it to be considered at the June 17-19, 1985 meeting. We believe your report essentially concluded that if the Commission continued its planned strategy for management of migratory striped bass the Chesapeake Bay stocks of this fish would begin their long-awaited recovery process. The Commission has taken several actions to implement your report's recommendations.

In the first case, the Commission agreed to revise, update and rewrite its Striped Bass Management Plan under the supervision of the Striped Bass Management Board. Funds are accumulated for this purpose and Plan revision has our highest ISFMP priority. Secondly, to further your recommendations the Commission adopted Amendment #3 to the Striped Bass Plan (copy enclosed). Amendment 3 will place further restrictions on striped bass harvest as suggested in your report and supplement the measures already in place through the initial 1981 Plan and two previous amendments. Amendment 3 is designed to protect Chesapeake Bay stocks and insure restoration of the Delaware system fish.

Further, the Commission's Law Enforcement Committee reported on its activities in preparation for fulfilling the Commission's responsibilities under Section 4(b) and (c) of the Act in respect to monitoring of enforcement of States' activities in support of implementation of the Plan, and the statutes and regulations affected. The enclosed notice and instructions to State law enforcement personnel documents the procedures that will be used.

In conclusion, Mr. Secretary, I am confident that the Commission, the member States, and the Departments of Commerce and Interior will continue to work together effectively and cordially on behalf of the successful restoration and management of this most important Atlantic Coast fishery resource. We believe the Commission is carrying out its inherent and assigned responsibilities in the highest tradition expected of our institution.

Sincerely yours,

-S-

Ralph W. Abele
Chairman

Enclosures (3)

STRIPED BASS BOARD CHAIRMAN'S REPORT TO ASMFC

COMMISSIONERS, JUNE 19, 1985

The Board has concluded 2 days of meetings. The primary purpose of the meeting was to conduct a review of all States' compliance with the requirements of the Striped Bass Management Plan and the Striped Bass Conservation and Management Act. Evaluation criteria were clarified, the status of the Potomac River and the District of Columbia were determined, in the context of the evaluation, and the Chairman of the Statistics and Scientific Committee summarized the recent machination of that body.

The Board then conducted a state-by-state evaluation of each State's actions and also evaluated the Potomac River and the District of Columbia.

I'm pleased to report that all 12 states and the Potomac River Fisheries Commission have been determined to be in compliance with the requirements of the Striped Bass Conservation and Management Act. Accordingly , Mr. Chairman, I would like to offer the following motion:

1. I move that the ASMFC, following an evaluation conducted by the Striped Bass Management Board, determine that all twelve States and the Potomac River Fisheries Commission have adopted or will shortly adopt all regulatory and statutory measures necessary to fully implement the Striped Bass Management Plan in their waters and the waters under the jurisdiction of the Potomac River Fisheries Commission. The Commission further determines that compliance with the Plan by North Carolina, New Jersey and Rhode Island is conditioned upon the implementation of statutes or regulations in those states by July 1, 1985 or shortly thereafter.

I further move that the Commission immediately transmit the results of this evaluation to the Secretary of Commerce and Interior and indicate that there are no negative determinations of plan compliance subject to the condition noted above.

2. I move that the ASMFC immediately initiate whatever actions are necessary to allow the District of Columbia to become a member of the Commission.

The Board also reviewed Amendment #3 to the Striped Bass Management Plan and after considerable discussion approved and revised the Amendment to better reflect the recent actions of the states to achieve East Coast striped bass restoration. Accordingly,

3. I move that the Commission adopt Amendment #3 to the Interstate Striped Bass Management Plan as revised to be effective July 1, 1985.

In conclusion, the Board heard reports from the Striped Bass Stocking Committee and a cautiously optimistic preliminary evaluation of 1985 spawning activity from the states that produce natural stocks of striped bass.

The Board also voted to set the necessary machinery in motion to rewrite and revise the Striped Bass management Plan. Respectfully request acceptance of this Report.

ATTACHMENT 2

AMENDMENT #3 TO THE ASMFC's INTERSTATE FISHERY MANAGEMENT

PLAN FOR THE STRIPED BASS

In order to meet the goal of the original 1981 Striped Bass Management Plan, which is to maintain a spawning stock, minimize the possibility of recruitment failure and to insure rebuilding of the severely depleted Chesapeake spawning stock, an additional third amendment is approved.

This measure is designed to supplement the management measures already in place through the 1981 Plan and its amendments. In the event this amendment is repealed or superseded, the 1981 Plan and previously adopted amendments will remain in effect until and unless the Commission acts to modify or replace them.

The ISFMP for Striped Bass is hereby amended as follows. The effective date of this amendment is July 1, 1985.

Objective 1. That the states reduce fishing mortality on the 1982 year class females, and females of all subsequent year classes of Chesapeake Bay stocks, to zero until 95% of the females of these year classes have an opportunity to reproduce at least once. This objective is intended to apply to the fishery until the 3-year running average of Maryland young-of-year index attains 8.0. Management measures which will accomplish this objective include combinations of the following which insure that no fishing mortality occurs on the target year classes:

a) Total closures of striped bass fisheries. Where a state has closed its fishery, neighboring states and jurisdictions whose waters border on or are tributary to those which are closed should take complementary actions to insure the enforceability of such closures.
b) Establishment of minimum size limits below which 95% of females have spawned at least once.
c) Establishment of minimum size limits in combination with seasonal closures which insure that sub-adult females are not taken in open fisheries.
d) Elimination of any allowable bycatch below minimum lengths.

Such measures need to be made effective prior to the time at which 1982 year class females become exploitable under a given jurisdiction's regulations.

Objective 2. That the Striped Bass Board support restoration efforts in the Delaware River system including the Delaware Bay and that a moratorium on striped bass fishing in the Delaware Bay system be implemented upon the onset of restoration efforts.

Approved by the Atlantic States Marine Fisheries Commission on June 19, 1985.

ATTACHMENT 3

New York State Department of Environmental Conservation

MEMORANDUM

TO: ASMFC Law Enforcement Committee Members Affected by Atlantic Striped Bass Conservation Act
FROM: Joseph T. Lynch, Committee Chairman
SUBJECT: Documentation of Striped Bass Enforcement Efforts
DATE: June 21, 1985

RECEIVED JUN 24 1985 ATLANTIC STATES MARINE FISHERIES COMMISSION

As recommended by the law enforcement committee, and approved by the Commission on June 19, 1985, enclosed are forms developed to record law enforcement data relating to striped bass enforcement. This data, which must begin being compiled July 1, 1985, will be used to measure the effectiveness of the law enforcement effort, as required by the Atlantic Striped Bass Conservation Act of 1984.

The form should be self-explanatory. Since certain terms are defined differently by different states, I have included a list of definitions to be used when compiling this data. Please fill out the report in its entirety. If a section does not apply to your state, or you have no data in that category for that month, put in "N/A" or "none." Do not leave it blank.

Monthly reports should be submitted to the following address, no later than the 15th of the following month:

Allan McGroary, Secretary
ASMFC Law Enforcement Committee
Dept. of Fisheries, Wildlife and
Recreational Vehicles
Division of Law Enforcement
100 Cambridge Street
Boston, MA 02202.

The information contained in the monthly reports must be compiled by the law enforcement committee and forwarded to the ASMFC twice a year. Here it will be reviewed and forwarded to Washington, where a decision will be made regarding the effectiveness of law enforcement actions on the striped bass fisheries. Deadlines are built in throughout this process and so it is very important that the monthly reports are not only complete, but that they are submitted in a timely fashion.

This data collection is not something that will go on forever. Its purpose is to aid in monitoring the enforcement effort on striped bass that is mandated by the Atlantic Striped Bass Conservation Act and the Act has a sunset of October 1, 1987. An analysis of the enforcement effort will only be as good as the data you supply. Please give this project a high priority.

ENFORCEMENT OF STRIPED BASS REGULATIONS

STATE_____ MONTH_____ YEAR_____

1. Striped Bass Checks
   a) Shoreside Fishermen _____
   b) Boat Fishermen _____
   c) Dockside Boats _____
   d) Wholesale/Retail Establishments _____

2. Striped Bass Enforcement Actions Taken
   a) Arrests _____
   b) Written Warnings _____

3. Penalties
   a) Jail Sentences _____
   b) Fines _____
   c) Other _____

4. Complaints on Striped Bass Received _____

5. Complaints on Striped Bass Investigated _____

6. Hours Spent on Striped Bass Enforcement _____

7. Other _____

NARRATIVE SUMMARY

_____

_____

_____

_____

_____

_____

DEFINITIONS

1. Striped Bass Checks - Any enforcement check to assure compliance with laws regulating striped bass.

   a) Shoreside Fishermen - Fishermen not using a boat, fishing for, or in possession of, striped bass.

   b) Boat Fishermen - Fishermen using a boat and on the water when checked.

   c) Dockside Boats - Number of boats checked at dockside. This will generally apply to commercial boats and statistics should reflect number of boats checked rather than fishermen.

   d) Wholesale/Retail Establishments - Any place striped bass are marketed.

2a. Arrests - Any criminal, civil or administrative action brought against a person or company, for striped bass offenses.

b. Written Warnings - Any official warning, reduced to writing, that carries no penalty.

3a. Jail Sentence - Number of days of incarceration assessed.

b. Fines - Any monetary penalties assessed, be they criminal, civil or administrative.

c. Other - Any other penalty, such as forfeiture of equipment, probation, etc. (please be specific).

4. Striped Bass Complaints Received - Self-explanatory.

5. Striped Bass Complaints Investigated - Those complaints that have been acted upon.

6. Hours Spent on Striped Bass Enforcement - Includes directed patrol, routine patrol and administrative time dedicated to striped bass enforcement.

7. Other - Any other significant efforts related to striped bass enforcement. This might include meetings attended to educate the public, or various interest groups, regarding striped bass regulations or enforcement problems.

Narrative Summary - Should be a brief summary of enforcement activities for the period. This is where you may wish to identify problem areas, areas of unusual success, exceptional enforcement actions or any area you feel needs to be highlighted.

51-664 O - 85 - 4

COMMERCIAL LANDINGS OF STRIPED BASS, BY YEAR, THOUSAND POUNDS

YEAR	ME	NH	MA	RI	CT	NY	NJ	DE	MD	VA	NC	Total
1962			589	61	32	657	494	108	3779	1944	747	8611
1963	1		480	71	30	673	753	48	3749	2746	736	9287
1964			522	75	35	995	996	31	3300	1887	714	8557
1965		8	463	60		740	761	32	2949	2213	484	7710
1966		8	586	250		1050	315	64	3347	2803	653	9076
1967		8	662	134		1630	327	66	4150	1677	1817	10471
1968	5	10	874	98		1550	459	49	4532	1614	1912	11103
1969		12	1038	132		1535	311	42	5088	2671	1568	12397
1970		14	1346	84		1338	223	54	3978	1782	2318	11135
1971		15	747	132		1184	290	39	2743	1221	1449	7822
1972		16	1,174	309		836	373	248	3,229	2659	1,261	10105
1973		15	1,386	623		1,741	766	586	4976	2888	1752	14,733
1974		5	1,258	336		1409	714	212	3502	2564	1016	11016
1975	*	4	1,360	306		1,184	342	106	2897	1,331	1,303	8833
1976		2	1,260	154	63	851	137	81	1877	954	1,038	6,537
1977	*	2	1,185	110	56	766	125	57	1815	833	571	5520
1978	1	2	860	57	26	1,122	77	38	1,264	442	678	4587
1979	*		695	54	45	570	40	26	747	467	614	3458
1980	*		886	20	29	598	24	17	2101	503	472	4650
1981	1		708	235	5	822	14	23	1641	395	417	4261
1982			643	270	6	471	10	26	518	147	338	2429
1983			230	191	8	296	19	20	397	151	361	1673
1984			104	54	5	540	10	37	940	496	511	2,697

* - Less than 1,000 pounds

NMFS
3/84
Updated 4/85

Attachment 1

Press RELEASE

ATTACHMENT 4

FOR IMMEDIATE RELEASE
Contact: Ted Reagle
(617) 727-1614

July 8, 1985

RECEIVED
JUL
STATES
COMMISSION

State Agents Nab STRIPED BASS VIOLATORS

In two separate incidents on the Massachusetts coast, officers of the state Division of Law Enforcement cited fishermen at the end of June for violating striped bass possession limits. The division, the state's chief environmental law enforcement agency, continues a strict surveillance and enforcement crackdown on violators of the emergency striped bass regulations that went into effect in 1984 to protect declining striped bass populations.

In a June 21 incident on the Merrimack River near Newburyport, an alert citizen observed a recreational fisherman who had nine undersized striped bass in his possession. The citizen quickly contacted local harbormaster, Leo Rocco. Mr. Rocco notified George Agganis, the state natural resource officer for the area. Officer Agganis cited the fisherman for illegal possession of striped bass and filed criminal complaints in Newburyport District Court.

more

Commonwealth of Massachusetts
Department of Fisheries, Wildlife & Recreational Vehicles
Walter E. Bickford
Commissioner

In a separate incident, occuring June 29 in Fairhaven, natural resource officer, Vernon Carter, observed a fisherman loading eight striped bass onto a truck. Carter approached the fisherman, asking him to present a Special Striped Bass Fishery Permit issued by the state's Division of Marine Fisheries. When the fisherman could not produce a permit, Officer Carter had the fisherman sell the stripers to a local market with the check for the sale signed over to the Commonwealth. Court complaints have been filed against the fisherman in question. The names of the violators in both incidences have been witheld pending court action.

Penalties possible for violations of striped bass regulations include revocation of permits, confiscation of all striped bass and property used to commit the violation, and fines of up to $1000.

Director Alan McGroary of the Massachusetts Division of Law Enforcement commented, "We are serious about enforcing these striped bass regulations. If we don't work hard to protect the striped bass now, there will not be any left to catch in ten years. I want to emphasize that all violators will be punished to the full extent of the law." McGroary appealed to Massachusetts residents to report suspected violations of the catch limitations for striped bass by calling a toll free line, 1-800-632-8075.

The emergency striped bass regulations limit recreational fishermen to one striped bass, with a minimum fork length of 34 inches, per day. There are no seasonal restrictions for recreational striped bass fishermen. Commercial fishermen holding a Special Striped Bass Fishery Permit may catch 100 pounds of striped bass plus one fish per day from June 1 through September 30. Fishermen who wish to sell more than 100 pounds plus one fish per day must also hold a Commercial Fishermen Permit. The seasonal restrictions also apply for Commercial Fishermen Permit holders.

Massachusetts implemented the emergency bass regulations in a coordinated effort with 12 other Atlantic coast states. Excessive fishing and polluted spawning grounds are blamed for the declining striped bass populations. Massachusetts reduced the commercial landing of striped bass in 1984 by 51.2% through implementation of these regulations.

END

51-664 O - 85 - 5

Atlantic States Marine Fisheries Commission
1717 Massachusetts Avenue, N.W.
Washington, D. C. 20036

August 5, 1985

CHAIRMAN
RALPH W. ABELE
PENNSYLVANIA FISH COMMISSION
P.O. Box 1673
HARRISBURG PA 17105-1673

VICE CHAIRMAN
ELTON J. GISSENDANNER
DEPARTMENT OF NATURAL RESOURCES
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TALLAHASSEE FL 32303

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EXECUTIVE DIRECTOR
IRWIN M. ALPERIN
(202) 387-5...

The Honorable Frank R. Lautenberg
U.S. Senate
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Lautenberg:

I am pleased to provide the following responses to your questions of July 24, 1985 for the record of the Senate Environment and Public Works Committee's July 19th hearing on the Atlantic Striped Bass Conservation Act.

1. A. Does the Interstate Fisheries Management Plan for Striped Bass address the alteration and loss of striped bass habitat and if not, why not?

Response: The 1981 Interstate Fisheries Management Plan for Striped Bass does not extensively address the alteration and loss of striped bass habitat. The Plan does devote several pages to a discussion of the impact of human modifications of the environment such as hydroelectric facility construction, point and nonpoint-source pollution, and the decline of submerged aquatic vegetation. The Plan also provides as one of its 7 objectives, to "promote determination and adoption of standards of environmental quality necessary for the maximum natural protection of striped bass."

The Plan did not address habitat considerations in greater depth at that time because all efforts were devoted to adopting minimum size limits in the commercial and recreational fisheries and spawning area closures as management measures to achieve the Plan's overall goal of perpetuating the striped bass resource in fishable abundance throughout its range.

B. Do you believe that loss of habitat is an important factor affecting the restoration of the striped bass?

Response: Yes, we believe very strongly that loss of habitat is an important factor affecting the restoration of striped bass.

C. Do you have plans to address habitat loss in your next plan revision?

Response: Yes, we plan to address habitat loss in our next Plan revision, which we hope to begin this year.

2. A. Has the Commission taken any action with respect to the Westway project?

Response: Yes. On January 21, 1985 the Chairman of the Commission, Mr. Ralph Abele (Executive Director, Pennsylvania Fish Commission) wrote a letter on behalf of the Commission to Mrs. Josephine S. Cooper, Assistant Administrator for External Affairs, U.S. Environmental Protection Agency. The letter expressed the Commission's concern about the potential for severe impacts to the coastal stocks of striped bass from this project, and asked Mrs. Cooper to exercise EPA veto authority under Section 404(c) of the Clean Water Act (Mr. Abele's letter and Mrs. Cooper's reply are attached).

B. What was the basis for your recommendation?

Response: The basis for our recommendation was a series of documents and analysis by scientists for the National Marine Fisheries Service and the Fish and Wildlife Service, and the Final Supplemental Environmental Impact Statement, that indicate that the project would affect a substantial portion of the Hudson River juvenile striped bass stocks. This stock of fish is, of course, very important in its own right. It also serves as a buffer in the remaining striped bass fishery in areas where striped bass from the Hudson River and the Chesapeake Bay intermingle. If the Hudson River stocks are diminished through additional loss of habitat, pressure on the already severely reduced population of fish of Chesapeake Bay origin will increase.

C. What process did the Commission use to decide whether to send this letter?

Response: The Chairman of the Commission, Mr. Ralph Abele (Executive Director, Pennsylvania Fish Commission) wrote to the 12 State members of the Striped Bass Management Board to poll the members about asking the EPA to exercise veto of the Section 404 permit (letter attached).

D. How many responses did you receive asking you to send this letter?

Response: We received five written responses concurring with Mr. Abele's proposal to ask the EPA to exercise its 404(c) authority. Several other States concurred by telephone. (Copies of the written responses are attached.)

E. Did anyone object to your sending this letter.

Response: No State responded in objection to Mr. Abele's proposal.

F. Is it fair to say that Westway will adversely affect the likelihood of success of the Commission's plan and the Atlantic Striped Bass Conservation Act?

Response: Yes. Scientific analyses indicate that the Westway project would affect a substantial part of the Hudson River striped bass population. The Hudson River is presently contributing at least 70 percent of the coastal migratory stock of striped bass in the Mid-Atlantic Bight, including the coastal and internal waters of New York, New Jersey, Connecticut, Rhode Island and perhaps all of southern New England. If the Hudson River population decreases, fishing pressure would increase on the already heavily stressed Chesapeake Bay Stocks of striped bass that intermingle with the Hudson River stocks in fishing areas off the Mid-Atlantic Bight. This would adversely affect our ability to achieve the primary goal of our Plan and the Atlantic Striped Bass Conservation Act - "to perpetuate the striped bass resource in fishable abundance throughout its range".

3. I have attached copies of all of our correspondence regarding the Westway project.

I hope this information will be useful to you. Please contact me again if we can provide any additional information.

Sincerely,

Irwin M. Alperin
Executive Director

Enclosures

w. urpen

Atlantic States Marine Fisheries Commission
1717 Massachusetts Avenue, N.W.
Washington, D. C. 20036

January 21, 1985

CHAIRMAN
RALPH W ABELE
PENNSYLVANIA FISH COMMISSION
P O BOX 1673
HARRISBURG PA 17120

VICE CHAIRMAN
ELTON J G BRENDANNER
DEPARTMENT OF NATURAL RESOURCES
3900 COMMONWEALTH BLVD
TALLAHASSEE FL 32303

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VIRGINIA

EXECUTIVE DIRECTOR
IRWIN M ALPERIN
(202) 387-5330

Westway "Westside"

Ms. Josephine S. Cooper
Assistant Administrator for
External Affairs
U. S. Environmental Protection Agency
401 M Street, SW
Washington, D. C. 20460

Dear Ms. Cooper:

We are writing to you with respect to the proposed Westside Highway Project, New York. As you are aware, a Final Supplemental Environmental Impact Statement (FSEIS), prepared by the U. S. Army Corps of Engineers and the Federal Highway Administration, is currently out for public review. The Corps of Engineers' involvement in this project stems from the need for a Section 404 permit.

We are greatly concerned about the potential for severe impacts to the coastal stocks of striped bass from this project. Furthermore, approval of the project as proposed would likely give the regulatory "green light" for more habitat destruction on both sides of the Hudson River. We concur with the findings of the FSEIS that these impacts cannot be mitigated. According to the FSES the habitat that would be lost is utilized by 26 to 44% of the Hudson's juvenile stock of striped bass. With the alarming declines in the Chesapeake Bay stocks of striped bass, it is imperative that the federal government not subsidize any further losses of striped bass habitat.

Unfortunately, it appears as if the Corps of Engineers may well issue the Section 404 permit for this project. Accordingly, we ask that you give the most serious consideration to exercising

your authority under Section 404(c) of the Clean Water Act.

As we understand it, the 404(c) program gives the Administrator the authority to veto Section 404 permits when the proposed project would have "unacceptable adverse impacts...on fishery areas (including spawning and breeding areas)". Westway will result in serious degradation of extremely valuable habitat and is therefore an excellent candidate for 404(c). Furthermore, the project is non-water dependent and there is an array of less environmentally damaging alternatives which do not require massive filling of aquatic habitat for real estate development.

I sincerely appreciate your attention to this matter and your positive response to my request.

Sincerely,

Ralph W. Abele
Chairman

A/t
cc: Col. Fletcher H. Griffis
District Engineer
NY District, COE
26 Federal Plaza
New York, NY 10278

Dr. Allan Hirsch
Office of Federal Activities
USEPA
401 M Street, SW
Washington, D. C.

Christopher J. Daggett
Administrator, Region II
Rm. 1009, 26 Federal Plaza
New York, NY 10007

Atlantic States Marine Fisheries Commission
1717 Massachusetts Avenue, NW
Washington, D. C. 20036

January 9, 1985

EXECUTIVE DIRECTOR
IRWIN M. ALPERIN
(202) 387 8330

CHAIRMAN
RALPH W. ABELE
Pennsylvania Fish
Commission
P.O. Box 1673
Harrisburg, PA 17120

VICE CHAIRMAN
ELTON J. GISSENDANNER
Department of Natural Resources
Bureau Commercial Fisheries
Tallahassee, FL 32303

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TO: All Members
ASMFC ISFMP Striped
Bass Management Board

FROM: Ralph W. Abele
Chairman

Ralph W. Abele

A Final Supplemental Environmental Impact Statement (FSEIS) prepared by the U. S. Army Corps of Engineers and the Federal Highway Administration on the proposed Westside Highway Project in New York is currently out for public review. The Corps of Engineers' involvement in this project stems from the need for a Section 404 permit.

We are concerned about the potential for severe impacts to the coastal stocks of striped bass from this project. Furthermore, approval of the project as proposed could give the regulatory "green light" for more habitat destruction on both sides of the Hudson River. The FSEIS indicates that these impacts cannot be mitigated, and according to that statement, the habitat that would be lost is utilized by 26-44 percent of the Hudson's juvenile stock of striped bass. The effects of this would not enhance the likelihood of success for the desirable features of the Coastwide Striped Bass Management Plan.

It appears now that the Corps of Engineers may well issue the Section 404 permit for this project.

The purpose of this letter is to see if there is a consensus or

majority among the members of the 12 states that have declared an interest in striped bass to asking the EPA to exercise a veto of the Section 404 permit, which under Section 404(c) is authorized when the proposed project would have "unacceptable adverse impacts on fishery areas, including spawning and breeding areas". Since the project is non-water dependent, and with our understanding that there are a number of less environmentally damaging alternatives which do not require mass filling of aquatic habitat for real estate development, this is an excellent candidate for 404(c).

In asking for this "straw vote", I am well aware of the problems of expressing opinions on this New York State/Federal problem, but given the mandates of the Studds Act, for which we are responsible, I feel that the Commission may be derelict if it does not actively demonstrate its feeling of responsibility for habitat protection where the lack of such effort could have a deleterious effect on the stocks of the coastwide resource.

Will you please, by return mail, advise me of your reactions to this proposal -- yes or no -- to asking EPA to exercise 404(c) on the proposed New York Westside Highway Project.

A/t

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 4 1985

RECEIVED
MAR 8 1985
ATLANTIC STATES
MARINE FISHERIES COMMISSION
OFFICE OF
EXTERNAL AFFAIRS

Mr. Ralph W. Abele
Chairman
Atlantic States Marine Fisheries Commission
1717 Massachusetts Avenue, N.W.
Washington, D.C. 20031

Dear Mr. Abele:

Thank you very much for your letter of January 21, 1985 regarding the Westside Highway project.

Your letter expressed concern over the Corps of Engineers' decision to issue a Section 404 permit for the Westside Highway project ("Westway"). As the U.S. Environmental Protection Agency's (EPA) national program manager charged with implementing this Agency's responsibilities under Section 404 of the Clean Water Act, I have carefully considered the options of any further action on the part of EPA on this project. Regional Administrator Christopher Daggett had recommended to me that EPA refer the Final Supplemental Environmental Impact Statement (FSEIS) on Westway to the Council on Environmental Quality (CEQ) pursuant to this Agency's authority under Section 309 of the Clean Air Act. Such a referral would have requested that CEQ independently review our environmental concerns with Westway, which center on the potential adverse impacts of the 227 acre Hudson River fill on the striped bass fishery.

After reviewing the Corps of Engineers' Record of Decision and EPA's earlier comments, and considering the broader issues and the likely consequences of additional Federal review of the permit decision, I recommended to Administrator Thomas that the FSEIS not be referred to CEQ.

CEQ referral would likely have consisted of either further consideration of the same information and arguments which were before the Corps, or a review requiring an extensive new round of fish studies. If CEQ had based its review on existing information, it is unlikely that it would result in any new insights which have not already been presented to the Corps by EPA, the Fish and Wildlife Service or the National Marine Fisheries Service. Since CEQ's recommendations are not binding, it does not appear that such a review would have added anything substantively new to the decisionmaking process. It does appear, however, that it would have caused additional administrative delay.

If CEQ were to have proposed undertaking an extensive new round of fish studies, there is uncertainty as to the conclusiveness of the outcome. We know that the shallow interpier area to be filled for Westway is used by young-of-the-year and yearling striped bass, but we do not know what characteristics make this habitat so attractive to the young fish. While additional studies of fish usage and habitat characterization would undoubtedly be helpful, at this stage such studies would lead to substantial additional delay and it is not certain that they would produce conclusive results.

In arriving at my recommendation, I balanced the prospects for increasing the level of confidence in prediction of the impacts on the fishery against the liability of substantial additional delay in the Federal review process. We have now spent over ten years reviewing the potential environmental effects of Westway. This is too long. Therefore, we feel that EPA's appropriate course of action is to allow Federal agency decisionmaking on Westway to come to final closure.

While Administrator Thomas requested no additional review of Colonel Griffis' decision, I formally recommended to the Department of the Army that the permit should include the following conditions relating to the striped bass fishery:

* completion, concurrent with the project's initiation, of the full 18-month habitat study originally contemplated by the Corps; and

* use of the proposed Mitigation Panel to more fully explore the prospects for effective mitigation and adequate monitoring, on and off-site, coupled with a requirement to install whatever practicable methods result.

I appreciate knowing of your concern for the outcome of Federal decisionmaking on this project.

Sincerely,

Josephine S. Cooper

Josephine S. Cooper
Assistant Administrator
for External Affairs

State of Florida
DEPARTMENT OF NATURAL RESOURCES

DR. ELTON J. GISSENDANNER
Executive Director
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard, Tallahassee, Florida 32303

GEORGE FIRESTONE
JIM SMITH
GERALD A. LEWIS
BILL GUNTER
DOYLE CONNER
RALPH D. TURLINGTON

January 21, 1985

Mr. Ralph W. Abele, Chairman
Atlantic States Marine Fisheries
Commission
1717 Massachusetts Avenue, Northwest
Washington, D. C. 20036

Dear Mr. Abele:

While I am generally opposed to alien entities meddling in the affairs of another state, I believe the plight of the striped bass presently is so critical that extraordinary measures are in order.

If, in fact, there are less environmentally damaging alternatives available for the construction of the Westside Highway Project in New York, as stewards of our living resources, we would be remiss in our responsibilities if we did not suggest a veto of this more damaging proposal.

Although migratory striped bass are not an important species in Florida, I know that it is -- or was -- a vital fishery in most of the other member states of the Atlantic Commission and I shall strongly support you in whatever action you feel is necessary to stave off further destruction of striped bass habitat.

Good to hear from you in the New Year.

Best wishes.

Sincerely,

Elton J. Gissendanner
Executive Director

EJG/jbd

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF FISHERIES

January 14, 1985

RECEIVED
OFFICE OF
EXECUTIVE
JAN 21 1985
REPLY TO
REPLY

Mr. Ralph W. Abele
Chairman, ASMFC
Pennsylvania Fish Commission
P.O. Box 1673
Harrisburg, PA 17120

Dear Ralph:

We have recently completed a review of the Westway EIS and are now in the process of preparing suggested comments to be submitted by DEP/CAM (our coastal area management unit). Our comments will indicate that there are "unacceptable adverse impacts etc., etc.". I believe CAM will suggest implementation of Section 404(c).

I have no problem with your proposal.

Sincerely,

Robert A. Jones
Director

Phone 203-566-2287
165 Capitol Avenue • Hartford, Connecticut 06106
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STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
STATE HOUSE - STATION 21
AUGUSTA, MAINE 04333

RECEIVED

January 15, 1985

Ralph W. Abele
Executive Director
Pennsylvania Fish Commission
3532 Walnut St.
Harrisburg, Pennsylvania 17109

Dear Ralph:

I concur with your proposal to ask EPA to exercise 404(c) on the proposed New York Westside Highway Project. We have reason to believe the Hudson is the source of a significant number of the striped bass that appear in Maine each year.

Yours sincerely,

SPENCER APOLLONIO
Commissioner

SA/bj

Department of Environmental Management
DIVISION OF FISH AND WILDLIFE
Government Center
Tower Hill Road
Wakefield, R.I. 02879
Tel. 401-789-3094

January 16, 1985

RECEIVED
1985
ATLANTIC STATES
MARINE FISHERIES COMMISSION

Department of the Army
New York District, Corps of Engineers
Regulatory Branch
26 Federal Plaza, Rm. 1937
New York, New York 10278-0090

Gentlemen,

I would very briefly like to comment on the FSEIS dealing with the so called "Westway" project.

I will not refer to specifics in the Statement but would like to point out that recent research work in Rhode Island indicates that approximately 50% of the striped bass harvested in Rhode Island originate from Hudson River stock. Information we have received indicates that the "Westway" proposal as stated will very adversely affect Hudson River stocks of striped bass. This proposal coupled with the dire condition of Chesapeak Bay striped bass stocks would have very serious negative impacts on our striped bass fishery.

We therefore strongly recommend that Westside Highway Project either be denied or radically amended to address the potential adverse affects on Hudson River Striped Bass.

Sincerely,

John M. Cronan

John M. Cronan
Chief

JMC/cma

State of North Carolina
Department of Natural Resources and Community Development
512 North Salisbury Street • Raleigh, North Carolina 27611

James G. Martin, Governor

S. Thomas Rhodes, Secretary

January 16, 1985

Mr. Ralph W. Abele, Chairman
Atlantic States Marine Fisheries Commission
Pennsylvania Fish Commission
P.O. Box 1673
Harrisburg, PA 17120

Dear Ralph:

I have discussed your letter of 9 January 1985 with Bob Mahood, Director of the North Carolina Division of Marine Fisheries. We share your concern with the potential negative impacts the Westside Highway Project may have on Hudson River striped bass.

Recent studies of the striped bass fisheries in southern New England have demonstrated the importance of Hudson River striped bass to fishermen in Connecticut, Rhode Island and other areas. Our oceanic tagging during 1969-71 off the North Carolina Outer Banks resulted in recaptures in the New York Harbor area. Thus, there is no doubt of the Hudson River's contribution to the Atlantic Coast migratory stock of striped bass. The precarious status of this stock is well-documented and resulted in passage of PL 98-613 by Congress last year. We cannot, on the one hand, impose severe restrictions on fishermen to conserve striped bass, while, on the other hand, approving destruction of habitat critical to maintenance of the stock.

We, therefore, support your suggestion for the Atlantic States Marine Fisheries Commission to request that the Environmental Protection Agency exercise its veto authority over issuance of a U.S. Army Corps of Engineers Section 404 permit for the New York Westside Highway Project.

Sincerely yours,

Michael W. Street, Chief
Fisheries Management Section

MWS:ms

cc: Bob Mahood
Ed McCoy

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Atlantic States Marine Fisheries Commission
1717 Massachusetts Avenue, NW
Washington, D.C. 20036

March 19, 1985

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RALPH W. ABELE
PENNSYLVANIA FISH COMMISSION
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HARRISBURG, PA 17105 1673

VICE CHAIRMAN
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EXECUTIVE DIRECTOR
IRWIN M. ALPERIN
(202) 387-5330

The Honorable Robert T. Stafford, Chairman
Committee on Environment & Public Works
410 Dirksen Senate Office Bldg.
United States Senate
Washington, D.C. 20510

Dear Senator Stafford:

I was in the audience and listening attentively when you addressed the opening session of the North American Wildlife and National Resources Conference here in Washington, D.C., yesterday.

In describing the extensive legislative agenda before your Committee, you made reference to hearings on the Clean Water Act, and mentioned that while no amendments to Sec. 404 were proposed, the Committee might look at Corps of Engineers' interpretation of the Congressional intent. Our Commission has had one experience with the Corps' issuance of a 404 permit for the huge landfill for the Westside Highway project along lower Manhattan Island, New York. We protested because the "Westway" project would seriously impact the Hudson River stock of striped bass, a species of extreme commercial and recreational fisheries interest along the Atlantic coast - and at present in a severe population decline. The Hudson River is presently contributing at least 70 percent of the coastal migratory stock of striped bass in the Mid-Atlantic Bight, including the coastal and internal waters of New York, New Jersey, Connecticut, Rhode Island and perhaps all of southern New England.

I have taken the liberty of enclosing our file of correspondence on this issue in response to your full Committee's oversight of the Section 404 process.

Sincerely,

Irwin M. Alperin
Executive Director

Enclosures

Memorandum

ATLANTIC STATES MARINE FISHERIES COMMISSION

TO Commissioners, Proxies & Advisory Committee DATE 3/14/85

FROM Irwin M. Alperin, Executive Director

SUBJECT Westside Highway Project, NY/Impacts on Striped Bass Number M 85-23

The ASMFC/I&PMP Striped Bass Fishery Management Plan, as amended, has proposed strong recommendation to States to reduce the mortality to striped bass stocks from fishing in an effort to abet recovery of the population from the dramatic decline of recent years. Information available to ASMFC from the U.S. Fish and Wildlife Service and the U.S. Environmental Protection Agency suggested that the habitat that would be lost by the development of the "Westway" project on the Hudson River side of Manhattan Island, is utilized by as high as 44% of the river's young-of-the-year and juvenile stocks of striped bass.

Accordingly, Chairman Ralph Abele wrote to the EPA and requested that it veto the Corps of Engineers' permit (Sec. 404 of the Clean Water Act) to go ahead with the project, because of adverse impacts on the fishery.

Chairman Abele's letter to Ms. Josephine Cooper, Assistant Administrator for External Affairs, U. S. EPA and her response are attached for your information.

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

RECEIVED
ATLANTIC STATES MARINE FISHERIES COMMISSION
OFFICE OF EXTERNAL AFFAIRS

Mr. Ralph W. Abele
Chairman
Atlantic States Marine Fisheries Commission
1717 Massachusetts Avenue, N.W.
Washington, D.C. 20031

RECEIVED
ATLANTIC STATES MARINE FISHERIES COMMISSION

Dear Mr. Abele:

Thank you very much for your letter of January 21, 1985 regarding the Westside Highway project.

Your letter expressed concern over the Corps of Engineers' decision to issue a Section 404 permit for the Westside Highway project ("Westway"). As the U.S. Environmental Protection Agency's (EPA) national program manager charged with implementing this Agency's responsibilities under Section 404 of the Clean Water Act, I have carefully considered the options of any further action on the part of EPA on this project. Regional Administrator Christopher Daggett had recommended to me that EPA refer the Final Supplemental Environmental Impact Statement (FSEIS) on Westway to the Council on Environmental Quality (CEQ) pursuant to this Agency's authority under Section 309 of the Clean Air Act. Such a referral would have requested that CEQ independently review our environmental concerns with Westway, which center on the potential adverse impacts of the 227 acre Hudson River fill on the striped bass fishery.

After reviewing the Corps of Engineers' Record of Decision and EPA's earlier comments, and considering the broader issues and the likely consequences of additional Federal review of the permit decision, I recommended to Administrator Thomas that the FSEIS not be referred to CEQ.

CEQ referral would likely have consisted of either further consideration of the same information and arguments which were before the Corps, or a review requiring an extensive new round of fish studies. If CEQ had based its review on existing information, it is unlikely that it would result in any new insights which have not already been presented to the Corps by EPA, the Fish and Wildlife Service or the National Marine Fisheries Service. Since CEQ's recommendations are not binding, it does not appear that such a review would have added anything substantively new to the decisionmaking process. It does appear, however, that it would have caused additional administrative delay.

If CEQ were to have proposed undertaking an extensive new round of fish studies, there is uncertainty as to the conclusiveness of the outcome. We know that the shallow interpier area to be filled for Westway is used by young-of-the-year and yearling striped bass, but we do not know what characteristics make this habitat so attractive to the young fish. While additional studies of fish usage and habitat characterization would undoubtedly be helpful, at this stage such studies would lead to substantial additional delay and it is not certain that they would produce conclusive results.

In arriving at my recommendation, I balanced the prospects for increasing the level of confidence in prediction of the impacts on the fishery against the liability of substantial additional delay in the Federal review process. We have now spent over ten years reviewing the potential environmental effects of Westway. This is too long. Therefore, we feel that EPA's appropriate course of action is to allow Federal agency decisionmaking on Westway to come to final closure.

While Administrator Thomas requested no additional review of Colonel Griffis' decision, I formally recommended to the Department of the Army that the permit should include the following conditions relating to the striped bass fishery:

- completion, concurrent with the project's initiation, of the full 18-month habitat study originally contemplated by the Corps; and

- use of the proposed Mitigation Panel to more fully explore the prospects for effective mitigation and adequate monitoring, on and off-site, coupled with a requirement to install whatever practicable methods result.

I appreciate knowing of your concern for the outcome of Federal decisionmaking on this project.

Sincerely,

Josephine S. Cooper

Josephine S. Cooper
Assistant Administrator
for External Affairs

Atlantic States Marine Fisheries Commission
1717 Massachusetts Avenue, N.W.
Washington, D. C. 20036

January 21, 1985

EXECUTIVE DIRECTOR
IRWIN M. ALPERIN
(202) 387-8330

CHAIRMAN
TH W. ABELE
SYLVANIA FISH
MISSION
Box 1673
HBURG, PA 17120

CHAIRMAN
IN J. GIBSENDANNER
RTMENT OF NATURAL RESOURCES
COMMONWEALTH BLVD.
NASSEE, FL 32303

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Ms. Josephine S. Cooper
Assistant Administrator for
External Affairs
U. S. Environmental Protection Agency
401 M Street, SW
Washington, D. C. 20460

Dear Ms. Cooper:

We are writing to you with respect to the proposed Westside Highway Project, New York. As you are aware, a Final Supplemental Environmental Impact Statement (FSEIS), prepared by the U. S. Army Corps of Engineers and the Federal Highway Administration, is currently out for public review. The Corps of Engineers' involvement in this project stems from the need for a Section 404 permit.

We are greatly concerned about the potential for severe impacts to the coastal stocks of striped bass from this project. Furthermore, approval of the project as proposed would likely give the regulatory "green light" for more habitat destruction on both sides of the Hudson River. We concur with the findings of the FSEIS that these impacts cannot be mitigated. According to the FSES the habitat that would be lost is utilized by 26 to 44% of the Hudson's juvenile stock of striped bass. With the alarming declines in the Chesapeake Bay stocks of striped bass, it is imperative that the federal government not subsidize any further losses of striped bass habitat.

Unfortunately, it appears as if the Corps of Engineers may well issue the Section 404 permit for this project. Accordingly, we ask that you give the most serious consideration to exercising

your authority under Section 404(c) of the Clean Water Act.

As we understand it, the 404(c) program gives the Administrator the authority to veto Section 404 permits when the proposed project would have "unacceptable adverse impacts...on fishery areas (including spawning and breeding areas)". Westway will result in serious degradation of extremely valuable habitat and is therefore an excellent candidate for 404(c). Furthermore, the project is non-water dependent and there is an array of less environmentally damaging alternatives which do not require massive filling of aquatic habitat for real estate development.

I sincerely appreciate your attention to this matter and your positive response to my request.

Sincerely,

Ralph W. Abele
Chairman

A/t
cc: Col. Fletcher H. Griffis
District Engineer
NY District, COE
26 Federal Plaza
New York, NY 10278

Dr. Allan Hirsch
Office of Federal Activities
USEPA
401 M Street, SW
Washington, D. C.

Christopher J. Daggett
Administrator, Region II
Rm. 1009, 26 Federal Plaza
New York, NY 10007

Ed: W'way foes in 'loonyville'

Daily News, Wednesday, January 23, 1985

By ALEX MICHELINI and MARCIA KRAMER

Mayor Koch yesterday urged federal regulatory officials to stop living in "loonyville" and get on with approving the long-stalled Westway project.

In addition, Gov. Cuomo criticized Westway opponents for being unduly concerned about "the sex life" of the Hudson River's striped bass stock.

"I can't believe this (concern for striped bass) is going to stop the project," Cuomo said in reiterating an appeal to President Reagan to expedite federal approval of Westway, which has been in the bureaucratic pipeline for 10 years.

Both Cuomo and Koch were reacting to an anti-Westway letter sent to the Army Corps of Engineers on Monday by Christopher Daggett, regional administrator of the U.S. Environmental Protection Agency.

DAGGETT URGED the Army engineers to deny a crucial dredging and landfill permit to the $2 billion Westway project because it might harm striped bass.

"This man (Daggett) must be in love with the striped bass," Koch told reporters. "It's incredible that after all we've been through that someone would suggest that the striped bass require that we not build Westway."

According to Koch, the striped bass still could "cavort" around the "rotted piers up and down this river," particularly the "many" on the New Jersey side.

"So if you look at it from that point of view," Koch added, "you come to the conclusion that it's loonyville in some of our agencies—to think that at this point after all the studies, we should still defer (approval of Westway)."

Daggett and his predecessors in the regional EPA post have long rankled Westway's governmental and political supporters. In 1978, former Gov. Hugh Carey touched off a furor when he called Eckhardt Beck, then the EPA regional chief, a "lunkhead" for opposing Westway.

Col. Fletcher (Bud) Griffis, the regional chief of the Army engineers, could rule in favor of the controversial dredge-and-fill permit as early as tomorrow, according to informed sources. Approval of the permit, however, is expected to touch off another round of challenges and possible court action from Westway's opponents.

from Ralph

Jason Helfer

RECEIVED
JAN
ATLANTIC STATES
MARINE FISHERIES COM

... FRIDAY, JANUARY 25, 1985 A31

Manhattan Island Project Clears a Major Obstacle

Army Engineers Back Westway Permit

By Dody Tsiantar
Special to The Washington Post

NEW YORK, Jan. 24—Westway, a multibillion-dollar highway and development project, cleared a major hurdle today as the head of the regional office of the Army Corps of Engineers recommended approval of a crucial landfill permit.

However, three federal agencies—the Environmental Protection Agency, the Interior Department's Fish and Wildlife Service and the Commerce Department's National Marine Fisheries Service—have announced their opposition, leaving the future unclear.

Westway has become a major environmental battleground, partly because of fears that the huge landfill, which would be a major addition to Manhattan Island, would create serious problems for the area's striped bass.

The 242-acre project, estimated to cost more than $2 billion, would take 10 years to build and include a six-lane underground highway, a park, and a residential and commercial real estate development.

Extending 4.2 miles along lower Manhattan, the project would create 169 acres of new land in the Hudson River where the bass winter in the warm, shallow waters.

Col. Fletcher Griffis, the Army's district engineer in New York, concluded, after a two-year study, that the landfill will have a "perceptible" but not a significant impact on the bass. He described the fish as having "a high ecological resistance and a high rate of reproduction."

Griffis said the recent sharp decline of Chesapeake Bay bass stocks, which prompted Maryland Gov. Harry Hughes to impose a moratorium on striped-bass fishing, should not be taken as a portent for New York. "The Chesapeake decline appears to be due to chemical pollution," Griffis reported. "Westway would only be a physical change in the habitat."

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

HARRY HUGHES
GOVERNOR

July 16, 1985

The Honorable John H. Chafee
Chairman
Subcommittee on Environment and
Public Works
United States Senate
408 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to respectfully request that during the hearings being held on July 19 on the implementation of P.S. 98-613, "The Atlantic Striped Bass Conservation Act," the Subcommittee on Environmental Pollution consider an amendment to include both the District of Columbia and the Potomac River Fisheries Commission (PRFC) in the Act.

It is the view of the Atlantic States Marine Fisheries Commission, the Department of Commerce, and that of Maryland that P.L. 98-613 does not recognize the fisheries management jurisdiction of the District of Columbia over the waters of the Potomac River flowing within its boundaries nor that of the PRFC over the Potomac River south of the District of Columbia (as established by the Potomac River Compact of 1958). The unfortunate result is that two major management entities with jurisdiction over a significant striped bass spawning tributary do not come within the purview of the Atlantic Striped Bass Conservation Act.

It should be noted that even though P.L. 98-613 does not make provisions for it, both the Scientific and the Statistical Committee and the Striped Bass Management Board of the Atlantic States Marine Fisheries Commission (ASMFC) have evaluated the Potomac River Fisheries Commission and the District of Columbia and have found the PRFC in compliance. It is my understanding that at a special meeting held on June 17, 1985 in Alexandria, Virginia, the Striped Bass Management Board unanimously recommended that P.L. 98-613 be amended to include the District of Columbia. The motion was strongly supported by

both the Maryland and Virginia members of the Board. Additionally, attached is a copy of a letter from the Potomac River Fisheries Commission supporting the inclusion.

In light of the great importance of the striped bass conservation program, I respectfully urge that P.L. 98-613 be amended to include specifically the District of Columbia and the Potomac River Fisheries Commission.

Again, Mr. Chairman, I want to express my great appreciation to you and to the other members of the Subcommittee for your leadership in protecting the rockfish -- Maryland's State Fish and an important national fishery resource.

Your consideration is very much appreciated.

Sincerely,

Harry

Governor

COMMISSIONERS

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MARYLAND VIRGINIA
"Potomac River Compact of 1958"

POTOMAC RIVER FISHERIES COMMISSION
222 Taylor Street
P. O. Box 9
COLONIAL BEACH, VIRGINIA 22443
804/224-7148

OFFICERS

KIRBY A. CARPENTER
Executive Secretary

J. CLIFFORD HUTT
Legal Officer

June 18, 1985

The Honorable Roy Dyson
224 Cannon House Office Bldg.
Washington, D.C. 20515

The Honorable Herbert Bateman
1518 Longworth House Office Bldg.
Washington, D.C. 20515

Re: Public Law 98-613
Short Title: "Atlantic Striped
Bass Conservation Act."

Gentlemen:

The Potomac River Fisheries Commission respectfully suggests that the provisions of P.L. 98-613 do not recognize the existence of either the jurisdiction of the Potomac River Fisheries Commission or the District of Columbia. Both of these Governmental agencies have exclusive jurisdiction over the management and control of all fishing activities within their boundaries. The waters within these boundaries are clearly vital to the Atlantic Striped Bass conservation program.

Under present U.S. Department of Commerce interpretation of this law, the evaluation process merges the Potomac River into the other waters of the State of Maryland and apparently has no jurisdiction with regards to the District of Columbia.

We have suggested to the Atlantic States Marine Fisheries Commission that this is not a reasonable or fair solution with regard to either the State of Maryland or our Commission, since our regulations only apply to the Potomac River and Maryland's only apply to the other waters of Maryland, exclusive of the Potomac. As a result, neither can insure compliance with the requirements of P.L. 98-613.

We suggest that P.L. 98-613, or its successor legislation, recognize the separate identity of the PRFC as the proper authority for the control of fishing activities within the confines of the Potomac River south of the District of Columbia (the boundaries of which are established by the Potomac River Compact of 1958) and that similar provisions be made for the District of Columbia.

We note that even though the Act does not make provision for it, the Scientific & Statistical Committee and the Striped Bass Management Board of the ASMFC have both evaluated the Potomac River Fisheries Commission and the District of Columbia

separately and have found this Commission in compliance.

At a special called meeting of the ASMFC, held in Alexandria, VA on June 17, 1985, the Striped Bass Management Board unanimously recommended the modification of P.L. 98-613 and/or successor legislation so as to recognize the separate identity of the Potomac River Fisheries Commission and the District of Columbia with regards to fisheries management issues. This motion was made by the Maryland member of the Board and seconded by the Virginia representative.

The full membership of the Potomac River Fisheries Commission endorses this concept and petitions its adoption and your support thereof.

Respectfully,

John T. Parran, Chairman

J.T.P./LMS

cc: attached list

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01:49P EST 13:50 EST

western union **Telegram**

SENATOR JOHN H CHAFEE, CHAIRMAN ENT DLY HSM
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION 406 HART SENATE OFFICE BLDG
WASHINGTON DC 20510

THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES IS GRATEFUL FOR THE INVITATION TO TESTIFY AT TODAYS HEARING AND REGRET THAT IT HAS NOT BEEN POSSIBLE TO COMPLETE OUR TESTIMONY. MR IRWIN ALPERIN OF THE ATLANTIC STATES MARINE FISHERIES COMMISSION IS AUTHORIZED TO SPEAK ON BEHALF OF THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES AT THIS TIME. THE INTERNATIONAL ASSOCIATION SUPPORTS THE TESTIFY OF THE ATLANTIC STATES MARINES FISHERIES COMMISSION WITH RESPECT TO THE FIRST TWO ITEMS ON THE HEARING ANNOUNCEMENT.

THE INTERNATIONAL ASSOCIATION IS CONCERNED THAT THE PROPOSED REAUTHORIZATION AND EXTENSION OF THE ATLANTIC STRIPED BASS CONSERVATION ACT WILL CONTINUE AN UNNECESSARY PROCESS OF POTENTIAL FEDERAL REGULATION OF FISHERY IN STATE WATERS. WE SUPPORT CONTINUATION OF THE TRADITIONAL STATE-FEDERAL PARTNERSHIP IN ALL ASPECTS OF MANAGEMENT OF SHARED FISHERY RESOURCES. HOWEVER, WE ASSERT THAT STATE REGULATION OF FISHERIES IN THE STATE WATERS WITH FEDERAL SUPPORT IN RESEARCH, LAW ENFORCEMENT AND HABITAT PROTECTION IS THE MOST APPROPRIATE AND EFFECTIVE MEANS OF REGULATING SUCH FISHERY IN THE LONG TERM.
RUSSELL A COCHINGHAM PRESIDENT INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES
CM400
TRENTON NJ 08625

13:50 EST

IPMPDMX WSH

WU 5248A (R5 79)

STATEMENT OF SPORT FISHING INSTITUTE
ON ATLANTIC STRIPED BASS CONSERVATION ACT
(PUBLIC LAW 98-613)
FOR OVERSIGHT HEARINGS ON JULY 19, 1985

The coastal states impacted by the Atlantic Striped Bass Conservation Act (Public Law 98-613) are taking remarkable strides in their assumption of responsibility to protect and restore to health the Atlantic coast stocks of striped bass. This statement can now be made because of the recent adoption by the Atlantic States Marine Fisheries Commission of Amendment No. 3 to the Striped Bass Management Plan. We applaud the Commission-member states for adopting this stringent set of conservation objectives. We can not fail to extend particular appreciation to the State of Maryland who set the standard of concern by taking the most difficult action of establishing a moratorium on all harvest. This action focused attention on the severity of the problem and set a standard of responsiveness to guide the other states.

Although one could claim that the Atlantic coastal states were making progress prior to the involvement of the U.S. Congress in this issue, few would argue that the deliberation and ultimate passage of P.L. 98-613 was the single most important factor in the equation leading to the progress which has been made over the last several months.

To the extent that the member states of the Atlantic States Marine Fisheries Commission have collectively assumed responsibility to allow no fishing mortality to occur on female striped bass of the Chesapeake Bay stocks from the 1982 and all subsequent year classes, until 95 percent of these fish have an opportunity to spawn at least once, (Amendment No. 3) the new law (P.L. 98-613) has, indeed, been effective.

It is our considered judgment that the list of management measures identified in Amendment No. 3, Objective 1, contains the means of accomplishing the stated goal. However, not all management measures listed in the Amendment will result in meeting the zero fishing mortality goal for female striped bass. And, the practical means that each state will employ to accomplish this justified, and necessary conservation action remain undecided.

Furthermore, several difficult management decisions must yet be made to accommodate the zero fishing mortality objective. Questions of bycatch in

Virginia and election of minimum size limits to protect female striped bass until they spawn, must be established and adopted. Contrary to some statements we hear, striped bass within the Chesapeake Bay can not be treated as sexually segregated at certain times of the year with any significant degree of certainty.

Because of the continuing uncertainty, we strongly endorse extending the life of P.L. 98-613 beyond the 18 month period originally authorized. It makes good sense to require continued federal monitoring and assessment of Plan implementation (as amended by Amendment No. 3). We, therefore, support amending Section 4(a) to read "June 1986."

Also, be assured that there will be increasing pressures within each coastal state to relax the conservation measures as the remaining 1982 year class (following high rates of loss during fall of 1984, and early 1985 under pre-existing 55 percent reduction objective) approach spawning age. A federal presence will remain essential to resist these pressures to harvest this "abundant" fishery until the year-class has spawned. We will then, and only then, be on a true course to restoration for this valuable fishery.

Two additional observations are offered for consideration. In some manner, the striped bass fisheries within two additional jurisdictions must be included under the Striped Bass Management Plan, i.e., the Potomac River Fisheries Commission and the District of Columbia.

Finally, as these stocks are migratory (transboundary) while alive, the fact that persons participating in the fishery also move across state lines, and considering the interstate movement of harvested striped bass, it is clear that there is a federal role in this arena related to the interstate commerce clause of the Constitution. According to published studies, restoration of the Atlantic coast stocks of striped bass to the levels of 1970 would generate $220 million in economic output (1980) and about 7,000 jobs. That is certainly commerce.

A 1977 Supreme Court decision stated, "at earlier times in our history there was some doubt whether Congress had power under the commerce clause to regulate the taking of fish in states waters, there can be no question today that such power exists where there is some effect on interstate commerce." This seems further justification for continued federal concern.

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